

Submission File

2 May 2018

South African Revenue Service
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Dear Sir/Madam

**COMMENTS ON THE SARS DRAFT INTERPRETATION NOTE: SECTION 13QUIN,
DEDUCTION IN RESPECT OF COMMERCIAL BUILDINGS**

1. We herewith present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) National Tax Committee on the Draft Interpretation Note – Section 13quin Deduction in respect of Commercial Buildings (the Note), released by the South African Revenue Service (SARS).
2. Our submission in Annexure A, includes a discussion of some of the most pertinent matters, which we believe require SARS' most urgent attention.
3. As always, we thank SARS for the ongoing opportunity to provide constructive comments in relation to draft legislation. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges.
4. 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



ANNEXURE A

COMMENTS

Definition of controlled company with reference to REITs

1. A REIT or “controlled company” (as defined in section 25BB, essentially a subsidiary of the REIT) may not claim a section 13quin deduction. The term “controlled company” used in 4.1 refers to the term defined in section 25BB.

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| 2. <u>Submission</u> : Given that controlled company as used in 4.1 has been defined in section 25BB, we propose that this term should rather be replaced with “subsidiary of such REIT”. |
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Meaning of “improvements”

3. It is stated at 4.1.2, that the word “*improvement*” is not defined in the Act”. However, this is not correct as “improvements” have been defined in section 13 for the purposes of that section.

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| 4. <u>Submission</u> : The wording should be changed to “not defined in section 13quin”. |
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Meaning of “new” with reference to the requirement that the building or improvement must be “new and unused”

5. The guidance sought to be provided in the opening paragraph of 4.1.5, on page 7, in relation to the “new” requirement is welcomed. However, the term “recently built” is still quite vague and uncertain.

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| 6. <u>Submission</u> : Further guidance and clarity is required on what qualifies as “recently built” (i.e. by stipulating a specific time period or some other criteria). |
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7. Relating to the issue raised in point 5 above, the reference to “some years” in the following sentence on page 7 is also vague: “If a taxpayer erected a building which was immediately mothballed for some years, it would be unused but not new in the latter years”.

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| 8. <u>Submission</u> : “Some years” should be replaced with a specific number of years as to clarify the meaning of “new”. |
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Example 2 - Use of the word “potentially”

9. The result in example 2 notes that where a building is wholly or mainly used for a qualifying purpose, the whole building “potentially” qualifies for the allowance and no apportionment is required.

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| 10. <u>Submission</u> : the word “potentially” appears unnecessary and should be omitted. In terms of section 13quin, where the building is wholly or mainly used for qualifying purposes the taxpayer WILL QUALIFY for the allowance. |
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ANNEXURE A

Change in use

11. Example 3 on page 11 indicates that, depending on the facts, the assessment that the floors were provided for residential accommodation could change if the apartments or offices were not successfully rented out for an extended period of time.

12. Submission: For purposes of clarity, a specific period of time should be indicated as to what SARS' views is as to equating to an extended period of time.

Purposes of producing income in the course of trade

13. In terms of section 13quin, the allowance may be claimed only if the building or improvement is used for purposes of producing income in the course of the taxpayer's trade.
14. The Note refers to ITC 777, (1953) 19 SATC 320 (T), wherein it was held that a company that unsuccessfully tried to let its property did carry on a trade, even if it didn't produce any income
15. However, the Note does not conclude as to whether this practice will be applied in all cases and how it will be applied where there is a 'break' in trade through no fault of the owner.
16. For example, a qualifying building is let in Years 1 – 4 and a section 13quin allowance is claimed in those years. The lease ends at the end of Year 4. The taxpayer struggles to find a replacement tenant despite adequately marketing the property. A lease is then concluded in Year 6. It is not clear as to whether or not SARS will permit the allowance in years 5 and 6.

17. Submission: Given the uncertainty noted above, it would be useful for SARS to clearly set out their interpretation in the years when no income is actually produced in the circumstances as set out above.

Example 4

18. Submission: It may be useful to include the end of the year of assessment (which appears to be 28 February), as well as when the building was brought into use, in Example 4.

Disposal of building

19. Paragraph 4.4 states that once a qualifying building is disposed of in a year of assessment, no section 13quin allowance may be claimed in a subsequent year.
20. Section 13quin(4) which the above paragraph relates to, states that: *"No deduction shall be allowed under this section in respect of any building that has been disposed of by the taxpayer during any previous year of assessment."*



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21. Submission: SARS should include a statement in paragraph 4.4 to clarify that the statement refers to qualifying buildings that were originally disposed of, but reacquired by the same taxpayer in a later year.

General recoupment provision

22. We note that whilst paragraph 4.3 indicates that the section 8(4)(a) recoupment does not apply to deductions, deemed to have been allowed under section 13quin(3), this is not restated in paragraph 6 which specifically deals with recoupments.

23. Submission: Reference should be made, in paragraph 6, that amounts deemed to have been claimed in terms of section 13quin(3) will not be recouped.

Conclusion

24. Although dealt with elsewhere (i.e. paragraph 4.4. which we have noted above needs to be clarified), the conclusion does not mention section 13quin(4).

25. Submission: On page 18, it should be stated that once a building has been disposed of by the taxpayer, that taxpayer will not be entitled to a deduction under section 13quin during years of assessment succeeding the year of that disposal.

Other: typographical or grammatical errors

26. Section 2: Please correct the typographical error appearing in the last paragraph on page 2 where reference is made to “retails stores” instead of “retail stores”.

27. Section 4.1.1: For reading ease, a grammatical change should be made by using a colon instead of a semi-colon after the word “considered” appearing on line 6 of page 4.

28. Section 4.1.1: The full stop appearing after the word “Accordingly” in the last sentence of footnote 8 on page 4 appears to be a typographical error and should be removed.

29. Section 4.1.5: Please rectify the typographical error appearing in the last paragraph on page 7 by changing “purcahsed” to purchased.

30. Section 4.1.5: It seems that the words “new and used” were typed in error in line 4 on page 8 and in the heading of Example 1 where in both instances the words “new and unused” were meant to be typed.

31. Section 4.1.6: In the second paragraph on page 8, the reference to “its” must be changed to “his, her or its” as the section 13quin allowance is also available to natural persons.

32. Section 4.2: In the following sentence appearing at the bottom of page 13, the word “by” must be added before the word “applying”: “The cost of an improvement to any building which qualifies for a deduction must be determined by applying the same principles”.



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33. Section 4.3: The following sentence appearing at the end of Example 5 on page 13 should be changed by removing the bold text in square brackets: *"No deduction is available **[in]** from year**[s]** 21 onwards because the total cost limitation was reached in year 20"*.
34. Section 4.6: Certain words seem to have been omitted from line 2 on page 16. It is suggested that this line should read (the underlined words represent the suggested insertion): *"without erecting or constructing it, the cost incurred by that taxpayer of that part for purposes of section 13quin is deemed..."*.
35. Section 5: The following sentence appearing at the bottom of page 16 should be changed by adding the underlined text and deleting the bold text in square brackets: *"no allowance allowed to the transferor company for that asset will be recovered, recouped or included in the transferor company's income **[of the transferor company]** in the year of the transfer..."*.
36. Section 6: It seems that a bullet point was erroneously added immediately before footnote 57 on page 17, which should be removed for reading ease.
37. Section 7: The word "persons" (plural) in the phrase "deemed to be one and the same persons" appearing in the second last paragraph on page 18 seems to be a grammatical error and should be amended to read "person" (singular).