Submission File Ref: #771187

8 October 2021

South African Revenue Service

Private Bag X923

Pretoria

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BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT TAX EXEMPTION GUIDE FOR COMPANIES WHOLLY OWNED BY INSTITUTIONS, BOARDS AND BODIES

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on the Draft Tax Exemption Guide for Companies wholly owned by Institutions, Boards or Bodies which provides general guidance on the exemption from income tax of qualifying wholly owned associations, corporations or companies of institutions, boards or bodies under section 10(1)(cA)(ii).

2. We set out below our comments in this regard.

COMMENTS

Preface

3. On page i, it is stipulated that "*The guide is based on legislation as at the time of issue.*"

4. Submission: It should be ensured that the date of issue is included on the final version of the Guide.

Glossary

5. On page 1, the term "company" is defined with reference to section 1(1).

6. Submission: It should be stipulated that it is section 1(1) of the Income Tax Act. This should be done throughout the Guide to avoid any confusion.

1. Introduction

7. On page 2 in the first paragraph, it is stipulated that the receipts and accruals of any company, all the shares of which are held by <u>any</u> institution, board or body …..that is exempt from income tax.

8. Submission: The Income Tax Act in section 10(1)(cA)(ii) refers to "any such institution….". It should be clarified that the institution, board or body referred to is one as envisaged in section 10(1)(cA)(ii).

Example 1

9. On page 7, Example 1 states that the Commissioner will be entitled to withdraw the exemption of Company X with effect from the commencement of the year of assessment during which the company issued the remainder of its authorised shares to a person other than an institution, board or body and thus failed to comply with section 10(1)((cA)(i).

10. Submission: The Guide should explain if and when the company must inform SARS of this issue of shares to a person other than an exempted institution, board or body.

6. Ancillary or complementary operations

11. On page 9, it is stated that the object of the institution, board or body set out in its founding document should be determined by interpreting this document in accordance with the ordinary rules of construction of a document.

12. Submission: For ease of reference, these rules could be provided in the Guide.

8.1 Prohibition on distributions

13. Examples of a distribution in the form of a dividend are provided on page 13 and 14. One of the examples is a donation of cash or assets to a holder of a share or to some other person on such holder's behalf.

14. Submission: A distribution of this nature cannot be a donation AND a dividend as the distribution is in respect of a share.

8.3 Dissolution

15. On page 16, it is stated that a company may choose to whom it will distribute its remaining assets on dissolution, without prior approval from the Commissioner, provided the recipient meets the dissolution requirements.

16. Submission: Reiterating the dissolution requirements here would be helpful.

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za

17. On page 17, it is stated that the amount of accumulated net revenue is the total undistributed profits or revenue which can include amounts of a capital or revenue nature.

18. Submission: This concept should be linked back to the amount as reflected in the statement of financial position for these entities (if the wording in the financial statements of these entities is different).

10 Withdrawal of the exemption

19. On page 19, it explains that a company whose exemption has been withdrawn will be liable for income tax and other taxes and duties in the same way as any other company.

20. Submission: The draft guide does not discuss any duties such as transfer duties for instance as is done in the Draft Guide on Institutions, Boards and Bodies. A discussion on the different duties should be included in this guide for completeness sake.

12.1.2 Dividends tax

21. On page 22, it is stated that it is important for any company contemplated in section 10(1)(cA)(ii) that holds investments through a trust to determine whether it has a vested right to a dividend before it is paid by the company to ensure that the necessary declaration of exemption filed with the company or regulated intermediary.

22. Submission: It should be clarified how this investment will be the investment of the company if it is held through a trust.

Yours sincerely

Dr Sharon Smulders

Project Director: Tax Advocacy

Piet Nel

Project Director: Tax Professional Development

The South African Institute of Chartered Accountants