

Submission File

28 June 2018

South African Revenue Service  
Private Bag X923  
Pretoria  
0001

BY E-MAIL: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear Sir/Madam

**DRAFT GUIDE ON THE CALCULATION OF THE TAX PAYABLE ON LUMP SUM BENEFITS**

1. We present herewith, on behalf of the South African Institute of Chartered Accountants' (SAICA) Employees' Tax Sub-Committee, our comments on the Draft Guide on the calculation of the tax payable on lump sum benefits (Draft Guide) as issued by the South African Revenue Service (SARS).
2. Our submission includes a discussion of one pertinent matter, which we have detailed in Annexure A.
3. As always, we thank SARS for the ongoing opportunity to provide constructive comments in relation to the Draft Guide. 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

Somaya Khaki

**Project Director: Tax**

Madelein Grobler

**Project Manager: Tax**

**South African Institute of Chartered Accountants**

## ANNEXURE A

### **Paragraph 5: Severance benefit**

5. Paragraph 5 of the Draft Guide on the calculation of the tax payable on lump sum benefits refers to a “severance benefit” as a *“lump sum received or accrued to a person from that person’s employer”*. The Draft Guide also specifies that *“A severance benefit, although a lump sum, is not a lump sum benefit as defined, since it is paid by the employer and not the person’s retirement fund.”* [our emphasis].
6. The interplay of section 10(1)(gC)(ii) of the Income Tax Act No. 58 of 1962 (the Act), read with the definition of a “severance benefit” as defined in section 1 of the Act, leaves open an argument that an individual who renders services outside South Africa and receives a severance payment from his or her employer, may be eligible to claim such an amount as *“any lump sum”* under section 10(1)(gC)(ii) of the Act. While we understand that it is not the intention of the legislature to allow a severance benefit to be considered to be payment in respect of past employment and the fact that the foreign remuneration exemption specifically carves out severance benefits to be eligible for an exemption, the wording of section 10(1)(gC)(ii) can be misconstrued. Furthermore, if one has to apply the *eiusdem generis* rule to the wording of section 10(1)(gC)(ii), there may be a difference of opinion based on interpretation.
7. **Submission:** We understand that the purpose of the Draft Guide is not to provide a detailed analysis of the legislation dealing with severance benefits, but submit that it may be worthwhile including a paragraph that confirms the position that a severance benefit is not considered to be payment in respect of past employment outside South Africa and is therefore not subject to the provisions of section 10(1)(gC)(ii) of the Act.