South African Institute of Tax Professionals

6 October 2015

The National Treasury
240 Vermeulen Street
PRETORIA
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The South African Revenue Service
Lehae La SARS, 299 Bronkorst Street
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**RE: SECTION 8C SUBMISSION**

Dear Yanga

As you know, we at SAIT were unable to attend the Section 8C workshop last Thursday, 1 October 2015 due to the email difficulty that has since been rectified. Thank you for the phone call alerting us of the meeting.

Late last night, we became aware of potentially revised wording from those who attended the meeting. In particular, we understand that a proposal exists for a new paragraph 64C of the 8th Schedule, which seeks a revised solution.

As a general matter, capital gain will be disregarded if taken into account as a disposal under subsections (4)(a), (5)(a) or (5)(c) of section 8C. In addition, the trust attribution rules of paragraph 80(2A) will "not apply in respect of an amount derived from a capital gain that is vested by a trust in a beneficiary if that amount must be taken into account in the hands if that beneficiary for purposes of determining a gain or loss in terms of section 8C." (newly proposed paragraph 80(2A) of the 8th Schedule).

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According to one of our Committee chairs, the amendment is seeking to assist taxpayers. The facts appear to be as follows:

*Incentive trust buys shares at R20 (say @ R20) & disposes of them (say @ R40) to employees as restricted equity instruments. The shares vest after, say, 3 years @ R100.*

*SARS' view is that R60 is taxable in the hands of the employees in terms of section 8C, and, since the shares are/were (depending on how you read paragraph 11(2)(j)) effectively disposed of to beneficiaries of the trust, the capital gain on such disposal (R20) should be taxed in the hands of the beneficiaries (i.e. the employees) by virtue of current law (i.e. paragraph 80(1)).*

*At issue is the taxation of R20, which National Treasury and SARS are seeking to tax at capital gains rates in the hands of the trust. The change is intended as a relief measure.*

Our concern is that the wording seems to suggest a different result. At issue is the word "amount". The "amount" subject to section 8C is the R60 amount, not the R20 gain accruing before transfer to the employees. Under the amendment, this R60 amount appears to be additionally subject to tax as a capital gain so as to result in double tax (which is not the intention).

If the amendment can be fixed to suite the above intention, SAIT has no objection to the amendment, but we believe that this circumstance arises in only a limited number of circumstances. The double taxation issue is of far greater concern for most rank-and-file share schemes so our members would rather defer the amendment than issue legislation that gives rise to this error.

We thank you again for reaching out.

Yours sincerely,

**Keith Engel**

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