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**RE: Draft Interpretation Note 60 (Issue 2): Loss on disposal of depreciable assets**

We write to comment on the draft interpretation note regarding the loss on disposal of depreciable assets.

A. Qualifying depreciable asset

The purpose of the interpretation note is to give guidance on the application and interpretation of section 11(o), which grants a deduction for a loss on disposal of a qualifying depreciable asset as a result of alienation loss or destruction.

We suggest that perhaps, in the interest of clarity:

- The heading should refer to qualifying depreciable asset given that the interpretation note does not deal with the treatment of the loss on disposal of non-qualifying depreciable assets
- The term “qualifying depreciable asset” should be defined upfront in the preamble, possibly with reference to paragraph 4.1.3

B. Election of the taxpayer

It is stated under point 4.1.1 that:

*“Assuming all the requirements are met, a taxpayer must elect to claim the deduction under section 11(o).” (our underlining)*

Given that the taxpayer can elect whether or not to claim the section 11(o) scrapping allowance, we think that it would more appropriate to say that:

*“Assuming all the requirements are met, a taxpayer may elect to claim the deduction under section 11(o).”*

C. Paragraph (bb) of the first proviso to section 11(o) – application to other than section 11(e) assets

It is stated under point 4.3.2 that, in terms of this proviso, the cost of assets must be determined as if the taxpayer had acquired the assets under a cash transaction concluded at arm’s length. This is based on paragraph (bb) of the proviso to section 11(o) and paragraph (vii) of the proviso to section 11(e). Paragraph (vii) of the proviso to section 11(e) states that, for the purpose of section 11(e), the cost of assets must be determined as if the taxpayer had acquired the assets under a cash transaction concluded at arm’s length.

The interpretation note does not explicitly deal with the application of paragraph (bb) of the first proviso to section 11(o) to assets other than section 11(e) assets, for example plant that qualifies for section 12C allowances. The question is whether these other assets are also subject to the arm’s length requirement for purposes of section 11(o). We suggest that this should be clarified.

D. Application of further proviso where no amount received or accrued

The further proviso to section 11(o) states that:

*“...no election may be made...by the taxpayer if the amount received or accrued from the alienation, loss or destruction of the asset was received or accrued from a person that is a connected person in relation to the taxpayer;”*

The interpretation note does not deal with the application of this further proviso where there is no amount received or accrued from the disposal of the asset, for example where an asset is donated to a group company. It is not totally clear whether the further proviso would apply in such circumstances.

E. Apportionment

Example 1 deals with the apportionment of a section 11(o) allowance between business and private usage. It uses a vehicle owned by a sole trader as an example and performs the apportionment based on business versus private kilometres. It is quite possible that this method is not appropriate under the circumstances or in relation to the asset in question.

We understand that straight-forward examples are used to illustrate the basic principles. However, we think it is important that it should be acknowledged in the interpretation note that other appropriate methods of apportionment can also be used. It should rather be emphasised that the method used by the taxpayer should be properly supported.

F. Death of a taxpayer

a. Principle

In terms of the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2015, in which the amendments to the treatment of deceased persons and estates were introduced:

*“In principle, gains and losses of whatever nature will, in terms of the unified rules, be triggered on a person’s death with the current exceptions being preserved.”*

b. Alienation and/or deemed disposal of an asset as a result of death

Point 4.1.5. which deals with the meaning of “alienation, loss or destruction” does not specifically deal with the death of a taxpayer and the alienation of an asset as a result of the death of a taxpayer. It also does not deal with the deemed disposal in consequence of the death of a taxpayer. We recommend that the interpretation note should deal with this for the sake of clarity.

c. Election on behalf of deceased

One of the requirements of section 11(o) is that the taxpayer must make an election for it to apply. It is not clear from the interpretation note that the executor of the deceased estate can make the election, presumably in his/her capacity as representative taxpayer of the deceased person. We recommend that this should be addressed.

d. Trade requirement

It is stated under point 4.5 that:

*“The alienation of an asset as a result of the death of a taxpayer does not arise as a result of or for the purposes of carrying on a trade. Accordingly, any section 11(o) allowance arising on death will be disallowed under section 23(g).”*

We do not think that section 11(o) read with section 23(g) requires that the alienation of an asset as a result of the death of a taxpayer must arise as a result of or for the purposes of carrying on a trade. These sections rather require, that in determining the taxable income derived by any person from carrying on a trade, no section 11(o) deduction shall be allowed, to the extent that the amount claimed was not laid out or expended for the purposes of trade. The amount claimed as a scrapping allowance is a portion of the cost of the asset (calculated as the total cost of the asset less allowances claimed less proceeds on disposal). Therefore, if and to the extent that, the asset was acquired and used for the purposes of trade by the taxpayer during his/her lifetime, section 23(g) should not apply. When determining the taxable income derived by the deceased person from carrying on a trade, the section 11(o) allowance should be allowed in line with the principle that “... *gains and losses of whatever nature will, in terms of the unified rules, be triggered on a person’s death with the current exceptions being preserved.*”

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We welcome the opportunity to comment on the draft interpretation note and look forward to future engagements.

Yours sincerely

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