



## South African Fiscal Association

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### Newsletter 2/2009

#### Dear members

The dates in May for the first seminar for 2009 have changed, and we hereby inform you about the topics for the first two seminars for 2009 and to invite your comments and contributions to these seminars.

1. The first seminar for **2009** will be held on
  - 26 May 2009 in Cape Town and
  - 28 May 2009 in Johannesburg
2. As a **topic** for the first seminar we have decided on **Selected issues relating to Loans**. There are so many important tax issues surrounding loans. These include transfer pricing, thin capitalisation, foreign exchange differences, deemed dividends, fringe benefits and income tax and CGT implications on loan waivers.
3. The first issue that will be addressed is **The quasi-equity argument in respect of transfer pricing**. Members specialising in transfer pricing will be well familiar with this question. In short, what characteristics are needed in order for a cross border loan to be regarded more akin to capital, with the result that no interest needs to be charged? More importantly even is the question of whether this concept is accepted by SARS? Could the concept of quasi-equity also apply to other areas in the Income Tax Act, say section 64C?
4. The second issue that will be addressed is **Selected questions on Thin capitalisation**. SARS has issued a Practice Note on thin capitalisation, which is very handy, but does not answer all the questions. Members are invited to send in any questions they may have. Questions already received include how/ whether the rules apply to partnerships and branches, whether the calculation only needs to be done at year-end and the circumstances under which SARS would accept a ratio other than the safe harbour of 3 to 1? There is also talk on a new Practice Note. What will be addressed in this new document?
5. SAFA is very grateful that **Joseph Rock**, one of the most experienced and respected staff members of SARS has agreed to speak on the first two issues. Joseph has participated in earlier SAFA seminars and we welcome him back.

6. The third topic to be addressed is **Issues relating to loan forgiveness**. SAFA members will be aware of two conflicting Special Court decisions regarding this issue relating to trusts and CGT. The discussion will include a case study on the waiver of loans issue and CGT, paragraph 12(5) of the Eighth Schedule, sections 8(4)(m) and 20 and the words "subject to" and "has been taken into account" regarding waivers and forgiveness and the different wording of reduction/discharge of a debt.
7. Once again SAFA is grateful that two high profile tax experts (both SAFA Exco members) agreed to speak on this topic. **Professor Jennifer Roeleveld** from the University of Cape Town will do the presentation in Cape Town whilst **Professor Lynette Olivier** from SARS and the University of Johannesburg will present in Johannesburg.
8. The **topic** for the August seminar will be "The meaning of Permanent Establishments". This is an important issue in international tax and SAFA has never dealt with it before. SAFA has been able to secure South Africa's most experienced tax treaty negotiator, **Mr Ron van der Merwe** from SARS, to be the key speaker. Other speakers will be announced later. The seminars are planned for 11 August 2009 (Cape Town) and 13 August 2009 (Johannesburg).

#### **BOOKING DETAILS FOR MAY SEMINARS:**

**Date:** 26 May 2009  
**Place:** Cape Town  
 PricewaterhouseCoopers, No 1 Waterhouse Place  
 Century City  
**Time:** 18h00 to 19h30  
**Speakers:** **Joseph Rock**  
**Prof Jennifer Roeleveld**  
**Bookings:** [jolandie.james@za.pwc.com](mailto:jolandie.james@za.pwc.com) Tel no: 021- 529 2368

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**Date:** 28 May 2009  
**Place:** Johannesburg:  
 Webber Wentzel, No 10 Fricker Road, Illovo Boulevard,  
 Johannesburg, 2196  
**Time:** 18h00 to 19h30  
**Speakers:** **Joseph Rock**  
**Prof Lynette Olivier**  
**Bookings:** [jolandie.james@za.pwc.com](mailto:jolandie.james@za.pwc.com) Tel no: 021- 529 2368

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We hope to see all our members at the seminars. Please also remember to market the activities and to invite new persons to become members of SAFA.

Regards

**Charl du Toit**  
**President: SAFA**