The soccer World Cup started with a fantastic kick-off by Bafana Bafana scoring the first goal. The last thing on any of our minds was the tax consequences attached to the shirts we had on. Where employers have given their employees gifts such as free tickets, T-shirts, soccer shirts, flags, and vuvuzelas, these are taxable benefits. The Seventh Schedule to the Income Tax Act provides that a taxable benefit shall be deemed to have been granted if any assets or goods (such as soccer shirts) are acquired by an employee from their employer for either no consideration, or for a consideration less than the value of the asset or goods. The value, for tax purposes, with regards to movable assets or goods where the employer acquired such assets or goods in order to dispose of it to the employee, is the cost thereof to the employer. Many employers may not have been aware of the tax consequences when employees were given soccer shirts to bolster support for our nation. In fact, many large employers even made customised soccer supporter shirts as part of its uniforms.

The big question is: when is the shirt provided by the employer a uniform, and when is it a fringe benefit? Section 10(1)(nA) of the Income Tax Act provides an exemption where it is a condition of employment that an employee is required, whilst on duty, to wear a special uniform, which is clearly distinguishable from ordinary clothing. The value of the uniform given to the employee, or any reasonable allowance made by the employer to the employee in lieu of such uniform, is exempt from tax. However, the uniform must be clearly distinguishable from ordinary clothing. So, if the uniform could be used outside the work environment, such as wearing the soccer or supporter shirt to a game, even if the shirt has the company name and logo on it, it will not qualify for the exemption.

It should be noted that the value of the uniform provided, or allowance granted, must be disclosed on the employees’ tax certificate. Likewise, the taxable fringe benefit must be disclosed on the employees’ tax certificate. This means that employers must recognise these on the payroll. There is a possible argument that no tax value should be attached to the employee where the employee is entertaining clients for marketing purposes at the World Cup at the instruction of the employer. SARS has introduced additional draft legislation to address this matter. While some critics may argue against this draft legislation as it results in a loss of tax revenue, which I estimate to be in excess of R3,5 million in taxes, the reality is that many employers have not yet recognised the tax liability. SARS could introduce a questionnaire for large and additional randomly selected employers to identify the failure to tax the benefits. But SARS has succumbed to the soccer fever and, instead, introduced a draft amendment to provide a once-off exemption for fringe benefit tax on 2010 FIFA World Cup clothing, match tickets, and other goods supplied to employees for the 2010/11 tax year:

“Notwithstanding anything to the contrary contained in the Seventh Schedule to the Income Tax Act, 1962, no value must be determined under the Schedule for any 2010 FIFA World Cup-related clothing, other goods or match tickets, supplied to an employee on or before 11 July 2010, to the extent that the aggregate of the cash equivalent of the value of the clothing, other goods or match tickets does not exceed an amount of R750 in respect of the employee.”

This draft legislation should go a long way to assisting employers and employees who had not yet recognised the fringe benefits. The final legislation should be in place before the end of the year of assessment.