

# TAX PRACTICE

## WEEKLY HIGHLIGHTS

WEEK OF 11 JAN - 17 Jan 2024  
(Issue 1-2024)

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### TOP STORIES

#### Provisional individuals and trust deadline: 24 January 2024

The 2023 Filing Season deadline for individual and trust provisional taxpayers is Wednesday, 24 January 2024. Provisional taxpayers are encouraged to submit their true and complete returns timeously to avoid late submission penalties. The last submission of the income tax return may be subjected to two separate types of penalties:

- 1. Non-compliance penalty subject to a fixed amount penalty:** The administrative non-compliance penalty for the failure to submit a return comprises of fixed amount penalties based on a taxpayer's taxable income and can range from R250 up to R16 000 a month for each month that the non-compliance continues. Administrative penalties recur each month that the taxpayer is non-compliant, up to a maximum of 35 months.
- 2. Once off late submission penalty:** A once-off administrative penalty may be imposed to any provisional and non-provisional taxpayers that were not auto assessed and submitted a return post filing season and pre-imposition of the recurring administrative penalty.

To avoid these penalties and the burden of requesting the remission of administrative penalties, ensure that the income tax returns for all provisional taxpayers are submitted by the due date. Learn more about the late submission penalties [here](#).

#### Implementation of estimated assessment on VAT

On 11 December 2023, SARS announced that the estimated assessment functionality had been implemented on the Value-Added Tax (VAT) system. In the event that a vendor does not provide the relevant material requested by SARS during the VAT verification process, SARS may raise an estimated assessment in terms of section 95(1)(c) of the Tax Administration Act, No. 28 of 2011 (the TAA).

For more information on the VAT estimated assessment, read [here](#).

[#StayAbreastOfTheTaxWave](#)

# PART A: COMPLIANCE & SARS OPERATIONS

## SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

### SAIT TaxHelpline – SARS operational queries

#### SAIT TaxHelpline officially opened for 2024

We are pleased to announce that the SAIT [TaxHelpline](#) is officially opened for 2024 and our expert consultants are ready to assist with a variety of topics including:

- Legislative interpretation;
- SARS Operations and eFiling;
- Customs;
- Accounting;
- Discretionary incentives and grants;
- Exchange control; and
- Ethics and professional conduct.

The designated [SARS escalations portal](#) is also available to assist in facilitating the escalation of cases outside the turnaround time to SARS.

Members who are struggling to log queries on the [TaxHelpline](#) following the reopening on Monday, 15 January 2024, kindly log out of the member portal, log back in and retry submitting.

**NB:** Please note that closing the browser tab does not log the portal out and you need to manually sign out and sign in using your password.

If the problem persists, please do let us know by sending your query details to [helpline@thesait.org.za](mailto:helpline@thesait.org.za) and we will allocate your a query number and assign the case to a consultant or SARS.

### SAIT TaxHelpline – escalations

As part of our service to members, SAIT escalates appropriate cases within the SARS structures on behalf of members. Members can submit a query via the [TaxHelpline](#) for SAIT to assist with a SARS escalation matter. You can read more on the process and requirements [here](#).

The most urgent cases escalated this week related to:

1. Delay in the issuance of assessment following manual intervention on the return; and
2. Delay in the finalisation of VAT verifications and subsequent payment of refunds.

### SARS regional and national operational meetings

SAIT and its Regional Representatives attend the SARS/RCB regional meetings on a quarterly basis (qualifying for CPD points).

#### [Feedback from the RCB/SARS regional and national meetings](#)

The following regional and national meetings have been scheduled:

1. Eastern Cape for 21 February 2024;
2. Mpumalanga for 29 February 2024; and
3. Western Cape for 6 March 2024

#### Other meetings of interest

1. RCB forum meeting scheduled for 5 March 2024;
2. RCB forum meeting scheduled for 4 June 2024;
3. RCB forum meeting scheduled for 10 September 2024; and
4. RCB forum meeting scheduled for 12 November 2024.

Members who wish to make themselves available to serve as SAIT Regional Representatives or raise agenda points can send their details (full names, region, and area of speciality), to Lerato Mashigo at [taxassist@thesait.org.za](mailto:taxassist@thesait.org.za).

## DAILY COMPLIANCE AND ADMINISTRATION

### Due dates for reporting and payments: January 2024

Month	Tax Type	Date	Notification
January 2024	Employment Taxes	05/01/2024	<b>EMP201</b> submissions and payments
	Income Tax	24/01/2023	Submission due date for <b>2023 income tax returns</b> for individuals and trusts that are provisional taxpayers
	Value-Added Tax	25/01/2024	Manual <b>VAT201</b> submissions and payments
	Value-Added Tax	31/01/2024	Electronic <b>VAT201</b> submissions and payments

### SAIT member resources

- [SAIT Important tax dates calendar](#) – contains important dates from December 2023 to July 2024 (unchanged).
- [SAIT SARS contact map](#) – links service requirements to SARS channels (unchanged).

### Key Operational News

#### Implementation of estimated assessment on VAT

On 11 December 2023, SARS announced that the estimated assessment functionality had been implemented on the Value-Added Tax (VAT) system. In the event that a vendor does not provide the relevant material requested by SARS during the VAT verification process, SARS may raise an estimated assessment in terms of section 95(1)(c) of the Tax Administration Act, No. 28 of 2011 (the TAA).

SARS has provided the following information regarding the VAT estimated assessment:

- The detailed reasons for the estimated assessment will be provided and can be viewed on the notice (VAT217) issued to the vendor.
- A Request for Correction will not be allowed if SARS has raised an estimated assessment for VAT in the same period.
- If the vendor does not agree with the estimated assessment, the required relevant material must be submitted within 40 business days from the date of the VAT217 notice that was issued.

- The vendor can submit the outstanding relevant material via eFiling, at a SARS branch or through the [SARS Online Query System](#) (SOQS).
- The vendor may Request for Extension if the relevant material cannot be submitted within 40 business days.
- If the Request for Extension is approved, the vendor will have up to the date of extension or five (5) years plus 40 business days to submit the relevant material.
- The vendor will be allowed to submit a Request for Suspension of Payment if the estimated assessment results in an amount payable for the period stipulated in the VAT217 notice issued.
- The vendor will not be allowed to submit a Notice of Objection (NOO) as an estimated assessment issued in terms of section 95(1)(c) is not subject to dispute.

For more information, members are encouraged to access the following external guides:

- [Guide to submit a Dispute via eFiling – External Guide](#)
- [Guide to completing the Value Added Tax VAT201 Declaration – External Guide](#)

## Tax Directives Interface specification version 6.601

On 7 December 2023, SARS announced its plans to implement enhancements to the Tax Directives process as indicated in the [IBIR-006 Tax Directives Interface Specification Version 6.601](#). The trade testing dates are still to be confirmed and the software is scheduled to be implemented by end of March 2024.

It is important to note that the enhancements planned relating to IBR-006 Tax Directives Interface Specification Version 6.601 do not include any changes in relation to the Two Pot System. The changes in respect of the Two Pot System will be communicated in due time. The affected stakeholders are set to receive communication with regards to the exact dates for trade testing and the implementation date closer to the time.

The following steps need to be followed to submit test files:

1. Before testing can commence, you will need to email 10 taxpayer reference numbers to [ncts@sars.gov.za](mailto:ncts@sars.gov.za) to ensure that the numbers are active. In the email subject line, use "Tax reference numbers for Trade Testing". A maximum of 10 taxpayer reference numbers will be allowed.
2. You will be notified via the same email address to confirm when testing may commence.

For trade testing queries please email [ncts@sars.gov.za](mailto:ncts@sars.gov.za).

## SARS timelines and closure period (reminder)

- The festive season triggers expected delays in dispute resolution processes, which is dealt with from a Legislative perspective by deeming certain days to be dies non. Where a period is regarded as dies non, it means that these days will not be counted for the purpose of calculating the respective time periods.
- The Legislative basis for dies non, can be found in section 1 of the Tax Administration Act, No. 28 of 2011 (the TAA), where a 'business day' is defined as follows:

***"business day** means a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9, excludes the days between 16 December of each year and 15 January of the following year, both days inclusive".*

- Based on the definition, the days between 16 December of a year and 15 January of the following year (both days included), are excluded from the time periods allowed to comply with the provisions of Chapter 9 (Dispute Resolution) of the TAA.

- However, for 2023, following the announcement of a public holiday on 15 December 2023, the last business days for disputes in 2023 will be 14 December 2023.

## Other SARS and related operational publications and announcements

No other SARS and related operational announcements were made for the period 11 – 17 January 2024.

## TAX PRACTITIONER MANAGEMENT

### SAIT TaxHelpline – Tax practitioner access and functionality (eFiling)

No new recurring matters have been identified in the queries submitted to SAIT for the week 11 – 17 January 2024.

### Key tax practitioner news

No new key tax practitioner news were published for the week of 11 – 17 January 2024.

### Government & Stakeholder Newsletters

No new Government & Stakeholder Newsletters were published for the week 11 – 17 January 2024.

## Other SARS operational publications and announcements

- **12 January 2024:** SARS announced that the SARS branch in Rissik Street, Johannesburg CBD, was closed until Monday, 15 January due to a gas leak. All virtual appointments would still be honoured. Those wanting to visit a branch office could make an appointment to visit either Randburg or Alberton branches.

# PART B – LEGISLATION & POLICY

## LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

### Tax policy & international agreements

No tax policy and international agreements were published for the period 11 – 17 January 2024.

### Legislation

#### 2023 Legislative cycle update

On 22 December 2023, the Taxation Laws Amendment Act (TLAA), Tax Administration Laws Amendment Act (TALAA) and the Rates and Monetary Amounts and Amendment of Revenue Laws Act were promulgated and assented into law by the President.

More specifically, the following Amendment Acts were published in the *Government Gazette* as well as on SARS' websites:

- [Act No 18 of 2022](#) – Tax Administration Laws Amendment Act, 2022
- [Act No 19 of 2022](#) – Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2022
- [Act No 17 of 2022](#) – Taxation Laws Amendment Act, 2022

### LEGISLATIVE INTERPRETATION

#### Legislative interpretation calls for comment

No new calls for comments were submitted for the week of 11 – 17 January 2024.

#### Legislative counsel publications

#### New Binding Private Rulings

##### **Binding Private Ruling 403 – Taxation of covered persons in respect of equity linked notes**

On 14 December 2023, SARS published [Binding Private Ruling 403 \(BPR 403\)](#) which determines the tax treatment of amounts causally connected to financial assets and financial liabilities of a 'covered person' which is subject to section 24JB(2).

Parties to the proposed transaction are the Applicant: a resident company and the Noteholder who are various resident companies.

The ruling made in connection with the proposed transaction is as follows:

- a) The provisions of section 24JB (2) will apply to the ELN.
- b) All amounts recognised in profit or loss in the Applicant's Statement of Comprehensive Income in respect of the ELN measured at fair value must be included in or deducted from the Applicant's income in terms of section 24JB (2).
- c) Section 24JB (3) will apply to the Subscription Amount and the Redemption Amount.
- d) The Subscription Amount will not be included in the 'gross income' of the Applicant in the year of assessment in which the ELN is issued.



- e) The Redemption Amount payable by the Applicant on the Redemption Date will not be deductible from the income of the Applicant in terms of section 11(a) read with section 23(g).

This binding private ruling is valid for a period of five years from 10 November 2023. Members may access [BPR 403](#) for full details.

## **Binding Private Ruling 402 – Transfer of long-term Insurance business to a local branch of foreign reinsurer**

On 14 December 2023, SARS published [Binding Private Ruling 402 \(BPR 402\)](#) which determines the tax implications of the transfer of life reinsurance business from a resident reinsurer to a local branch of a foreign company.

The parties to the proposed transaction are: the Applicant who is a resident and licensed life reinsurer that is a wholly-owned subsidiary of Company A, Company A; who is a resident that is a wholly-owned subsidiary of Company B, Company B; a foreign reinsurance company that is the ultimate holding company of the group to which the Applicant and Company A belongs, the Branch which is a permanent establishment of Company B in South Africa and lastly, the Trust which is a resident trust established for insurance regulatory purposes as required by section 40 of the Insurance Act 18 of 2017.

The ruling made in connection with the proposed transaction is as follows:

### *“The Act*

- a) *The difference in the market value of net insurance liabilities assumed by the Branch from the Applicant and the IFRS value of such net insurance liabilities must be allocated to the Untaxed Policyholder Fund and the Risk Policy Fund. Any surplus in those funds must then be transferred to the Corporate Fund and taxed in the Corporate Fund in accordance with section 29A (7).*
- b) *The cash payment received by the Branch from the Applicant as consideration for the assumption of insurance liabilities of the Applicant constitute a receipt of a capital nature and must not be included in the gross income of the Branch as defined in section 1(1).*
- c) *The Branch will constitute a short-term insurer conducting short-term insurance business as contemplated in section 28 and should be taxed in accordance with the provisions of section 28.*
- d) *The claims paid in respect of the short-term insurance policies issued and or assumed from the Applicant are deductible under section 11(a) read with section 28(2)(c).*
- e) *The Branch will be allowed a deduction for technical liabilities assumed in terms of section 28(3A) in respect of the Branch policies transferred and must include such amounts deducted in income in the following year of assessment under section 28(4).*
- f) *The amount in respect of liabilities to be deducted in terms of section 28(3A) must be determined in accordance with IFRS as prescribed in the formula in section 28(3A).*
- g) *The transfer of non-cash capital assets by the Branch to the Trust to ensure the required level of assets are held as security by the Trust for regulatory purposes will not be a disposal under paragraph 11(2)(a) for purposes of the Eighth Schedule.*
- h) *As the transfer of assets by the Branch to the Trust will not result in a disposal for purposes of the Eighth Schedule, any income and gains attributable to the assets held in the Trust will be attributed to the Branch and taxed accordingly.*

### *The VAT Act*

- a) *Paragraph (v) of the proviso to the definition of “enterprise” specifically excludes from the definition any activity to the extent that it involves the making of exempt supplies and as such, to the extent that any assets are applied exclusively for exempt purposes, those assets would not form part of the enterprise of a vendor*

*As the enterprise or business is being sold and such enterprise consists of assets and liabilities, section 8(16) applies to the supply of the enterprise as a whole and does not apply to the individual assets. Notwithstanding the Agreement the assets exclusively used for exempt purposes will not form part of the enterprise for VAT purposes. The supply of the remainder of the business as a whole (which includes the mixed-use assets) will be deemed to be made wholly in the course or furtherance of the Applicant's business and VAT must be accounted for on the full selling price at the standard rate of 15%.*

*The Applicant can therefore claim an input tax deduction under section 16(3)(h) in respect of the mixed-use assets sold by the Applicant to the Branch, if the documentary requirements under Interpretation Note 92 are obtained.*

- b) The payment by the Applicant to the Branch for the Branch assuming the insurance liabilities of the Applicant, subsequent to reducing the insurance liabilities with the negative liabilities, will not be consideration in respect of a separate supply of services. Consequently, the Applicant and the Branch do not need to account for VAT.*
- c) The Delegation Payment which relates to the Branch assuming other freestanding liabilities of the Applicant will be an exempt supply and as a result the Branch does not need to account for VAT on that portion of the Delegation Payment.*
- d) The Branch will be required to register for VAT if it will have taxable supplies exceeding R1 million in a 12-month period in South Africa and Company B will not be required to register as a VAT vendor in South Africa.*
- e) To the extent that the supply of the assets comprises financial services which are exempt supplies, the supply of those assets for regulatory purposes will be exempt from VAT and therefore the value of supply rules for connected parties will also not apply."*

This binding private ruling is valid in respect of the year of assessment ending 31 December 2023. Members are encouraged to access the [BPR 402](#) for full details.

### **Binding Private Ruling 401- Leasehold improvement allowance**

On 14 December 2023, SARS published the [Binding Private Ruling 401](#) (BPR 401) which determines the tax consequences for a lessor in respect of improvements effected by a lessee.

The parties to the proposed transaction are the Lessor, which is a resident company and the Lessee, which is a resident company, which is independent of the lessor.

The ruling made in connection with the proposed transaction is as follows:

- a) In respect of the Inclusion Amount, the Lessor may deduct from its income an allowance under section 11(h), equal to the difference between the Inclusion Amount and the present value of the Inclusion Amount, which present value is determined by discounting the Inclusion Amount at 6% over the number of years taken into account in the determination of the relevant allowance granted to the Lessee under the provisions of section 11(g).

This binding private ruling is valid for a period of three years, from 11 September 2023. Members can access the full [BPR 401](#) for more information.



## Binding Private Ruling 400 – donations tax implications on issue of shares at nominal value to enhance BBBEE credentials

On 14 December 2023, the [Binding Private Ruling 400](#) (BPR 400) which determines whether donations tax will be payable on the amendment of a company's memorandum of incorporation (MOI) to allow for the issue of shares at nominal value to a Corporate Social Investment (CSI) trust in order to enhance the BBBEE status of a group of companies.

The parties to the proposed transaction are the Applicant: a resident trust benefitting employees of a group and who currently holds all the issued share capital in Company A, Company A; a resident company who currently holds shares in the listed holding company of the group (Listco) and CSI Trust; a resident CSI trust.

The ruling made in connection with the proposed transaction is as follows:

- a) No donations tax liability arises under section 54 as a result of the proposed transaction comprising:
- the amendment of Company A's MOI.
  - the amendment of the Applicant's trust deed to incorporate the provisions of the ESOP; and
  - the issue of shares by Company A to CSI Trust for a nominal consideration.

This binding private ruling is valid for a period of three years from 14 August 2023. Members can access the [BPR 400](#) for more information.

### Court cases published

On 15 January 2024, SARS published the following Supreme Court of Appeal judgment:

Date of delivery	Case	Applicable legislation
09/01/2024	<a href="#">Unitrans Holdings Limited v CSARS (A3094/2022)</a>	Income Tax Act, 1962
<b>Summary:</b> Appeal from the Tax Court – whether interest expenditure is tax deductible, as having been incurred in the course of carrying out 'any trade' and in the production of income – section 24J(2) of the Income Tax Act – the taxpayer trading as an investment holding company – the interest expenditure claimed not closely linked to its income earning operations as an investment holding company – the purpose of the expenditure was not to produce income but to further the interest of the subsidiaries – therefore, the expenditure was not incurred in the production of the taxpayer's income.  Appeal dismissed with costs.		

On 15 January 2024, SARS published the following High Court judgment:

Date of delivery	Case	Applicable legislation
18/12/2023	<a href="#">Enviroserv Waste Management (Pty) Ltd v CSARS (154/2022)</a>	Income Tax Act, 1962 Tax Administration Act, 2011
<b>Summary:</b> Income tax law – section 12C(1)(a) of the Income Tax Act 58 of 1962 (the ITA) – whether cells built into landfills and used for treatment and storage of waste qualify as plant under the section – whether they qualify as buildings under section 13 of the ITA – decomposition and biodegradation of the waste in the cells is a process similar to manufacture – the appellant is entitled to claim depreciation allowance in respect of the cells.		

Income tax law – understatement penalty imposed for an incorrect statement made in income tax returns – reasonable care not taken in completing returns – Commissioner for the South African Revenue Service did not prove prejudice under section 102 read with sections 221 and 223 of the Tax Administration Act 28 of 2011.

## Other SARS publications and announcements

### SARS published the Average Exchange Rates (reminder)

On 6 December 2023, SARS published the average exchange rates:

Tables	Description
<a href="#">Table A</a>	A list of the average exchange rates of selected currencies for a year of assessment as from December 2003
<a href="#">Table B</a>	A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months
<a href="#">Example</a>	How to calculate Average Exchange Rates for a period longer than 12 months

## OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

### Drugs seized at OR Tambo International Airport

On 6 January 2024, the customs officers of the South African Revenue Service seized 23 kgs of narcotics disguised as moulded artwork at the cargo sheds of the OR Tambo International Airport.

The customs officers came across a box headed for New Zealand. The box contained items of moulded artwork, which looked suspicious. The officers used a narcotics test kit and some of the items tested positive for crystal meth, which weighed 10kg. A test by the South African Police Service (SAPS) on other items tested positive for fentanyl which weighed 13kg. The narcotics were handed over to SAPS for further investigation. The artwork had an estimated street value of R37 million.

The full story may be accessed [here](#).

### National Treasury and SARS publish the 16th annual edition of the Tax Statistics

National Treasury and SARS have jointly published the 16th annual edition of the Tax Statistics

On 29 December 2023, National Treasury and SARS jointly published the 16th annual edition of the Tax Statistics. The 2023 edition provides an overview of tax-revenue collection and tax-return information for the 2019 to 2023 tax years, as well as for the 2018/19 to 2022/23 fiscal years.

The media release may be accessed [here](#).