TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 21 - 27 March 2024
(Issue 11 -2024)

TABLE OF CONTENTS

MEMBERS' DIGEST 3
PART A: COMPLIANCE & SARS OPERATIONS 7
SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT 7
SAIT TaxHelpline – SARS operational queries 7
SAIT TaxHelpline – escalations 8
SARS regional and national operational meetings 8
Upcoming RCB/SARS regional and national meetings 9
DAILY COMPLIANCE AND ADMINISTRATION 9
Due dates for reporting and payments: March and April 2024 9
SAIT member resources 10
Key Operational News 10
Other SARS and related operational publications and announcements 10
TAX PRACTITIONER MANAGEMENT 10
SAIT TaxHelpline - Tax practitioner access and functionality (eFiling) 10
Key tax practitioner news 11
Government & Stakeholder Newsletters 12
Other SARS operational publications and announcements 13
PART B – LEGISLATION & POLICY 14
LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY 14
Tax policy stakeholder engagement 14
Legislation 14
LEGISLATIVE INTERPRETATION 14
Court cases published 16
Other SARS publications and announcements 17
OTHER MATTERS OF INTEREST FOR A TAX PRACTICE 17

TOP STORIES

SARS collection deadline: 28 March 2024

Today, 28 March 2024, marks the end of SARS' 2023/2024 financial year. Although the Minister of Finance, Enoch Godongwana, indicated that revenue collection was R56.1 billion lower than the amount estimated in 2023, it is anticipated that SARS will be closer to the targets following the strict collection strategies SARS employed during March 2024.

For VAT, vendors are reminded that the electronic payments are due today, 28 March 2024. Payments received by SARS after midnight will be subject to penalties and interest.

SARS Commissioner, Edward Kieswetter, will announce the preliminary results at 12:00 on Tuesday, 2 April 2024.

Round-up of the first leg of the SAIT roadshows

Over the course of March, SAIT has been engaging with its members by embarking on a national roadshow. The purpose of these roadshows is for SAIT to engage with our members and understand your needs and wants and how we, as a professional body, can assist you in managing your practice, your clients and navigating SARS.

The first leg of the roadshow saw SAIT engage members from the following cities:

- Cape Town;
- Gqeberha;
- Durban;
- Johannesburg; and
- Pretoria.

For the highlights of what our members have raised, read here.

#StayAbreastOfTheTaxWave

Are you a **tax practitioner** with a passion for writing?

Let's feature your article on the **Tax Practice: Weekly Highlights.**

Send your article to taxqueries@thesait.org.za.

Approximately 500 – 600 words

MEMBERS' DIGEST

Navigating the shifts: a deep dive into changes in 2023 for South Africa's tax landscape

Written by: Godfrey Williams,
Tax Advisor (SA)™

In this article, we turn our focus to the significant operational changes that have occurred in South Africa's tax landscape during the year 2023.

The year 2023 was a landmark year for South Africa's tax environment with the introduction of new tax legislation, the launch of digital platforms and shifts in enforcement strategies. These changes have not only reshaped the way in which businesses and individuals comply with their tax obligations but also the role of tax professionals in guiding them through this complex landscape.

Join us as we delve into the intricacies of these operational changes, providing you with the insights and analyses you need to better serve your clients and stay ahead in this dynamic field. Together, we will chart the course through the complexities of South Africa's 2023 tax landscape, arming you with the knowledge to confidently guide your clients through these changes. Let's embark on this journey together.

Resilience amid challenges budget speech

In the ever-evolving realm of South Africa's fiscal policies, Budget 2023 unfolds a narrative that tax professionals cannot afford to overlook. The Minister's endeavor to present "the facts as they are" unveils stark realities and challenges in stabilising public finances, shaping the trajectory for tax-related matters in the nation.

A noteworthy surge in total tax collections, reaching approximately R1.69 trillion for the year, marks a significant stride. The tax-to-GDP ratio is poised to climb to 25.4% in 2022/23, followed by a progressive increase to 25.7% over the next three years. Despite economic headwinds, tax revenue collections are set to outperform earlier estimates.

Elevated commodity prices, increased profitability in the services sector and a buoyant personal income tax collection driven by economic recovery and employment improvements, contribute to this fiscal resilience. Notably, growth in import prices, resilient corporate income and enhanced tax administration underscore the sectoral dynamics influencing tax outcomes.

The role of the South African Revenue Service (SARS) in augmenting revenue collections is acknowledged but concerns linger over governance failures. The call for a structural review of SARS governance promised after the 2018 Nugent Commission remains unanswered. Tax professionals urge a re-evaluation to enhance service delivery and taxpayer experience.

A cautious approach to tax rate increases is evident; it aligns with research indicating potential impediments to economic activity during low-growth periods. While inflationary adjustments are made, critics argue that they fall short of addressing the actual inflation rate. The focus remains steadfast on protecting the tax base, implementing reforms and aligning with the recommendations of the Davis Tax Committee.

Therefore, Budget 2023 paints a nuanced picture for tax professionals in South Africa. The intricacies of revenue dynamics, fiscal risks, governance concerns at SARS and strategic tax policies collectively shape the landscape. Navigating this terrain demands astuteness, adaptability and a keen understanding of the economic forces at play.

Overview of key tax changes affecting individuals in South Africa

The recent adjustments to individual tax policies have significant implications for taxpayers.

Personal income tax

Personal income tax (PIT) continues to be a substantial contributor to the total estimated tax collections in South Africa. The latest figures indicate that PIT accounted for R601.6 billion of the total estimated tax collections of R1.69 trillion, constituting 36% of the total tax revenue. An inflationary increase in personal income tax brackets and rebates has resulted in a noteworthy relief of R15.7 billion. Notably, the change in the primary rebate has increased the tax-free threshold from R91.250 to R95.750 for taxpayers under 65 years old.

Exemption for interest and dividend income

The annual exemption on interest earned by individuals, both younger and older than 65 years, remains unchanged at R23.800 and R34.500, respectively. Additionally, the annual contribution limit to tax-free investments remains at R36.000.

Rooftop solar incentive

In a bid to boost electricity generation, a proposed rooftop solar incentive aims to encourage individuals to invest in solar photovoltaics (PV). Eligible individuals can benefit from a tax rebate of 25% of the cost of new and unused solar PV panels with a maximum rebate capped at R15.000 per individual. The South African Institute of Chartered Accountants (SAICA) has expressed concerns about limiting the allowance to solar PV panels only and the one-year availability, considering likely legislation in January 2024.

Two-Pot retirement system

Following extensive public consultation, the first phase of legislative amendments to the retirement system is set to take effect on 1 March 2024. The changes allow pre-retirement access to a portion of retirement assets while preserving the rest for retirement. Contributions remain deductible with permissible withdrawals taxed according to specific rules. The forthcoming draft legislation will clarify further details on seed capital, defined benefit funds, legacy retirement annuity funds, and withdrawals.

Proposed changes include apportioning the tax-free investment contribution limitation and limiting the deduction of retirement fund contributions to align with provisions for individuals ceasing to be tax residents.

Clarifying anti-avoidance rules for low-interest or interest-free loans to trusts

Proposed amendments aim to clarify exclusions and foreign-denominated loans, ensuring a comprehensive understanding of what constitutes a primary residence in the Eighth Schedule of the Act.

The brackets for transfer duties, retirement fund lump sum benefits and retirement fund lump sum withdrawal benefits will all be adjusted upwards by 10% to compensate for inflation, whereas tax rates remain unchanged.

These changes have a significant impact on individuals.

Corporate Tax

The new Section 24(2A) came in effect in January 2023. The amendment will provide tax relief for suppliers who use lay-by agreements as a sales strategy. They will be able to deduct the amount of lay-by proceeds from their gross income in the year of assessment in which the goods are delivered to the consumer. This will align the timing of income recognition with the actual receipt of cash and reduce the tax burden on suppliers.

General corporate tax proposals

Recent developments indicate a review of Practice Note 31 of 1994 (PN 31) and Practice Note 37 of 1995 (PN 37). SARS announced its intention to withdraw these practice notes, effective from years of assessment, starting on/after 1 March 2023. The decision is prompted by the increasing abuse of the tax deduction concession per PN 31 and the failure of PN 37 to incorporate the requirements of the term registered tax practitioner as stipulated in the Tax Administration Act, 2011 (TAA). SARS is currently considering public comments and aims to delay and align the withdrawal with the effective date of any related legislative changes.

Case law:
Coronation Investment Management

In the case of Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd, known as the Coronation Case, revolves around the tax treatment of Coronation Investment Management SA (Pty) Ltd's foreign subsidiary, Coronation Global Fund Managers (Ireland) Ltd. The key issue is whether Coronation SA should include Coronation Ireland's income in its taxable income under South African law. Coronation SA argued for an exemption based on the 'foreign business establishment' provision, contending that Coronation Ireland's operations were primarily conducted outside South Africa. However, SARS disagreed, seeking to tax Coronation Ireland's income in Coronation SA's hands. The dispute centers on whether Coronation Ireland was suitably staffed and equipped to conduct its primary business operations outside South Africa. The Tax Court initially ruled in favor of Coronation SA, but the Supreme Court of Appeal (SCA) overturned this decision. The SCA held that while Coronation Ireland had elements of a foreign business establishment, it lacked the necessary economic substance due to outsourcing its investment management function. The SCA concluded that investment management was a core function of Coronation Ireland's business, despite outsourcing, and thus, the foreign business establishment exemption did not apply. This case highlights the importance of understanding the economic substance of foreign subsidiaries in tax matters, especially concerning outsourcing practices.

Extension of diesel fuel levy refund

Initially implemented in 2000, the diesel refund system aimed to provide relief for fuel and Road Accident Fund (RAF) levies for specific sectors. In response to the current electricity crisis, the refund on the RAF levy for diesel used in the manufacturing process will be extended to foodstuff manufacturers, mitigating the impact of fuel prices on food items. Refund payments are set to commence once the system is developed and will be applicable from 1 April 2023 to 31 March 2025.

Clarification of anti-avoidance rules

The Act includes anti-avoidance rules targeting debt-like equity instruments such as third party backed shares. Currently, any dividend or foreign dividend received in respect of a third-party backed share is deemed as income. Exceptions apply if funds from the shares are used to acquire equity shares of an operating company. However, the rules do not cover situations where the person no longer holds shares in the operating company. The government proposes a legislative amendment to provide clarity on this matter.

Changes for Companies

South Africa is witnessing several notable changes in the dynamic business realm that will influence how companies operate and strategise. This summary provides insights into key developments in the corporate landscape.

Refining the research and development (R&D) tax incentive

In response to public consultation on the R&D incentive, the government proposes significant refinements:

1. Extension of the incentive for 10 years from 1 January 2024 with a six-month grace period for project commencement before application submission.
2. Simplification of the definition of R&D for an easier application process.
3. Adopting the Organisation for Economic Cooperation and Development (OECD) Frascati Manual principles in defining R&D, emphasising novelty, uncertainty, systematic approach and transferability/reproducibility.
4. Removal of the exclusion for internal business processes, broadening the scope of qualifying activities.

5. Empowering the Commissioner of SARS to disclose information to the Minister of Higher Education, Science and Innovation for better monitoring and evaluation.

Extending the Urban Development Zone (UDZ) incentive

Due to ongoing public consultation and delayed review processes, the UDZ tax incentive is extended for two years until 31 March 2025. The extension allows for a thorough assessment of the incentive's impact, requiring additional engagement and evaluation of municipal data on uptake and compliance.

VAT

SARS' Binding General Ruling No. 63 (BGR 63) specifies documentation requirements for vendors to substantiate input tax deductions on goods repossessed or surrendered under instalment credit agreements (ICAs). Effective from January 1, 2023, BGR 63 addresses challenges in obtaining debtor-signed forms by introducing section 20(8A) under the VAT Act. It mandates various records depending on whether the debtor is a vendor or not, including confirmation of vendor status, communication about VAT registration changes, and details on the cash value of goods. Credit providers must retain notices regarding repossession or surrender, ensuring compliance even when debtors are uncooperative. BGR 63 emphasizes the importance of proper documentation in VAT transactions, aiming to facilitate input tax deductions for vendors while maintaining regulatory compliance.

Adjusting minimum royalty rate for oil and gas companies

After consultations, the government proposes maintaining flexibility in royalty rates based on profitability for oil and gas companies. The minimum royalty rate is set to increase from 0.5% to 2% with the maximum remaining at 5% to ensure fair compensation for the country's finite resources. This approach acknowledges the varying costs and profit levels faced by companies operating in different environments such as deep or shallow waters.

In conclusion, the year 2023 has marked a pivotal moment for South Africa's tax landscape, witnessing substantial changes that demand the attention and strategic foresight of tax professionals. The Budget Speech, with its nuanced depiction of fiscal challenges, sets the stage for a resilient yet cautious approach to taxation. The South African Revenue Service (SARS) plays a vital role but lingering governance concerns necessitate a thorough review for enhanced service delivery.

The adjustments to individual tax policies bring relief and incentives, notably in personal income tax, exemption for interest and dividend income, rooftop solar incentives and the two-pot retirement system. These changes, coupled with proposed amendments to anti-avoidance rules, significantly impact individuals, requiring a comprehensive understanding by tax professionals.

Corporate tax proposals reflect a dynamic business environment with refinements to the Research and Development (R&D) Tax Incentive and the Urban Development Zone (UDZ) Incentive extension. The oil and gas sector witnesses adjustments in royalty rates, acknowledging the diverse operational landscapes faced by companies.

As we navigate these shifts, tax professionals must remain vigilant by adapting to legislative changes and by demonstrating astuteness in guiding clients through this intricate tax terrain. The journey through South Africa's 2023 tax landscape demands technical expertise and a keen understanding of the economic forces at play. Let this be a collective endeavour to stay informed, resilient and proactive in the ever-evolving realm of taxation.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Update on appointment system not working for tax practitioners

On Friday, 23 February 2024, SAIT and other recognised controlling bodies (RCBs) met with senior SARS officials to discuss this issue and submissions made. SARS confirmed that physical (walk in) appointments for tax practitioners has been limited to three provinces, namely, Western Cape, Eastern Cape and KwaZulu Natal due to capacity constraints within the SARS branches. SARS further stated that tax practitioners in the other provinces ought to utilise the digital channels and virtual appointments (telephonic and video appointments).

Unfortunately, in some cases, the eBooking system does not allow a tax practitioner to book virtual appointments and will only accept a physical appointment. This particular system error was demonstrated to SARS and the officials requested some additional examples to investigate where the problem may be.

Between 23 February and 22 March 2024, SAIT has been in constant contact with SARS and has shared multiple examples with SARS to investigate the problem with the purpose of resolving it permanently.

On 26 March 2024, SARS confirmed that the problem had been identified, however, the resolution thereof would only be realistically implemented at the end of April 2024.

SAIT has requested an interim workaround for the struggling tax practitioners so that taxpayers are not prejudiced by the SARS system errors.

We will provide additional feedback in due course.

Issues with the ITR14 return not opening and not saving completed data (*updated)

With many companies with a February year-end rushing to submit the 2023 annual corporate income tax returns (ITR14) by 29 February 2024, many taxpayers and tax practitioners have been left frustrated as the data completed on the ITR14 does not save after completion.

In several cases investigated, the main problem rests on the Balance Sheet tab and persists whether the return is saved, or a calculation is requested.

*Subsequent to this challenge, an additional problem was identified wherein users were unable to access the ITR14 in its entirety. On 22 March 2024, SARS identified an interim workaround to bypass this problem, while it attempts to resolve the problems on their end.

The workaround includes changing the return type to an ITR12EI and changing back to the ITR14. For more information, access the workaround here.

Renewed concerns over eFiling profile hijackings and fraudulent refunds (reminder)

Over the past few months, SAIT and other recognised controlling bodies (RCBs) noted an increase in the eFiling profile hijacking cases and the fraudulent changing of banking details.

During November 2023, SARS migrated the function to report digital fraud to the SARS Online Query System. Additionally, SARS established a new and specialised team to investigate digital fraud.

SARS, through the Cyber Crim Task team, is busy implementing a flag list to prevent fraudulent refunds going out once profile hijacking is identified, however, the older years are being prioritised. Members who have identified any digital fraud are encouraged to report those cases to SARS via SARS Online Query System and cctv@sars.gov.za and to the SAIT TaxHelpline for assistance.

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. SARS' issuing third party appointments without responding to requests for suspension of payment or deferral payment arrangements;
2. Delay in the finalisation of VAT verifications and subsequent payment of refunds; and
3. Delay in the finalisation of disputes, including objections and appeals.

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).

Feeback from the RCB/SARS regional and national meetings

On Monday, 25 March 2024, the RCB Forum met with the Office of the Tax Ombud (OTO) regarding the collaborative efforts the forum and the OTO can take to tackle the operational challenges tax practitioners are experiencing with SARS. The following issues were raised:

- **Deregistration of tax practitioners without notifying or engaging the relevant RCB:** RCBs are regulators of Tax Practitioners, however, SARS does not share the necessary information with RCBs to perform this function. Tax Practitioners are deregistered by SARS and are off the system for months, whereas if RCBs are engaged prior, the RCBs can intervene.
- **Difficulties in correcting erroneous third-party data:** The Forum made a detailed submission to SARS on the difficulties experienced in the correction of third-party data. SARS has not moved on this thus far, and perhaps the OTO can assist in engaging SARS.
- **Difficulties in correcting incorrect auto-assessments:** It is almost impossible for a taxpayer or tax practitioner to correct an auto-assessment after 80 days because of the restrictions on the eFiling system.
- **SARS response time with respect to fraud:** There seems to be a higher incidence of eFiling profile hijacking than in the last two years, and this is not dealt with timeously by SARS. The taxpayer is left to deal with the consequences including verifications and/or revised assessments on 'fictitious' returns submitted by fraudsters.

- **SARS system errors or challenges with new processes not dealt with timeously and/or efficiently:** When system errors are noted or new processes introduced, escalations are not always dealt with as promptly as they should be and create significant difficulty for taxpayers. We believe SARS should create specific channels to deal with those cases where the system challenges result in additional, unnecessary procedures for taxpayers to follow in order to resolve consequential issues.

  Examples:
  - Appointment system challenges;
  - ITR14 fields not saving even on submission, including errors on assessment;
  - DTR01 payment date prepopulated incorrectly; and
  - Beneficial ownership disclosure.

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Gauteng South for 10 April 2024;
2. Gauteng North for 23 May 2024;
3. Western Cape for 5 June 2024;
4. Free State and Northern Cape for 10 June 2024;
5. Gauteng South for 17 July 2024;
6. Gauteng North for 22 August 2024;
7. Free State and Northern Cape for 9 September 2024;
8. Free State and Northern Cape for 11 November 2024;
9. Gauteng South for 13 November 2024; and
10. Gauteng North for 21 November 2024.

Other meetings of interest

1. SARS National Operations meeting scheduled for 18 April 2024;
2. RCB forum meeting scheduled for 4 June 2024;
3. SARS National Operations meeting scheduled for 25 July 2024;
4. RCB forum meeting scheduled for 10 September 2024;
5. RCB forum meeting scheduled for 12 November 2024; and
6. SARS National Operations meeting scheduled for 21 November 204.

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.

DAILY COMPLIANCE AND ADMINISTRATION

Due dates for reporting and payments: March and April 2024

Month	Date	Tax Type	Notification
March 2024	07/03/2024	Employment Taxes	**EMP201** - Submissions and payments
	25/03/2024	Value-Added Tax	**VAT201** - Manual submissions and payments
	29/03/2024	Value-Added Tax	**VAT201** - Electronic submissions and payments

Month	Date	Tax Type	Notification
April 2024	01/04/2024	Employment Taxes	**EMP501** - Start of the annual employer reconciliation submissions
	01/04/2024	Other	**Third-party data (IT3)** - Start of the annual third-party submissions period
	05/04/2024	Employment Taxes	**EMP201** - Submissions and payments
	25/04/2024	Value-Added Tax	**VAT201** - Manual submissions and payments
	30/04/2024	Value-Added Tax	**VAT201** - Electronic submissions and payments

SAIT member resources

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

Key Operational News

CIPC upgrades its security after breach (*update)

Following the major security breach at the Companies and Intellectual Properties Commission in early March 2024, the CIPC system underwent some upgrades from Friday, 15 March to Monday, 18 March 2024.

*Additional system downtime has been scheduled for the annual financial year-end preparation. All CIPC systems and websites will be unavailable due to the annual preparation from Thursday, 28 March 2024 at 10:00 until Monday, 1 April 2024 at 16h00.

Other SARS and related operational publications and announcements

- 18 March 2024: The SOQS External Guide was updated with the following information:
  - The 'Submit supporting documents' and 'Report new estate case' queries have been updated in line with the latest system enhancements.
  - The following new queries have been included in the guide:
    - ✓ Request for Auto Assessment status: This enables the taxpayer to query whether they are part of the SARS Auto Assessment population or not.
    - ✓ Submit an LBI query: This enables the taxpayers registered at the Large Business and International (LBI) or High Net Worth (HNW) to direct their queries to LBI or HNW.

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 of 21 - 27 March 2024.

Round-up of the first leg of the SAIT roadshows

Over the course of March, SAIT has been engaging with its members by embarking on a national roadshow. The purpose of these roadshows is for SAIT to engage with our members and understand your needs and wants and how we, as a professional body, can assist you in managing your practice, your clients and navigating SARS.

The first leg of the roadshow saw SAIT engage members from the following cities:

- Cape Town;
- Gqeberha;
- Durban;
- Johannesburg; and
- Pretoria.

What members raised:

- SAIT needs to do away with the auto-curated 'Daily Digest' email as it is confusing and spamming.
- All members are satisfied with the Tax Practice: Weekly Highlights publication.
- There is a great need for SAIT to relook and improve the LexisNexis system in terms of its accessibility and ease of use.
- SAIT should endeavour to cater for member's accounting needs which will eliminate dual membership.
- SAIT should communicate its service offerings often as members are not aware of the many benefits that they have.
- Tax practitioners are being held accountable for past clients' compliance as a result of the inability to delete eFiling profiles.
- The current SAIT Member Portal could be more user friendly, and searching for topical information contained therein is difficult to find. Information therein needs to be categorised to render a much positive user experience.
- The SAIT CPD webinars must be adjusted to the SARS calendar to improve relevance and uptake of attendance. Moreover, the system should allow registration of a series of webinars and not just one.
- SAIT should endeavour in automating CPD tracking to avoid the current manual intervention process and erroneous allocation of CPD points.
- The SAIT website must be built with the view of being an information hub for Tax Practitioners; SAIT must eliminate the involvement of third-party platforms (such as Vimeo) in order to bolster trust.
- SAIT should look into incorporating a virtual community platform to allow active SAIT members only to engage on matters related to their tax experience and profession.
- SAIT should begin emphasising the importance of its designations to recruiters and employers to avoid the misconception of Chartered Accountants preference for posts requiring a Tax Professional.
- SAIT should look at providing feedback to members on SARS resolved matters to highlight SAIT's progress on activities.
- There is a need to improve the SAIT contact line with skilled individuals who will provide optimal support and understanding of issues.
- A survey needs to be conducted for members at the end of every filling season to document members' experience.

The following SARS Operational Challenges were identified which require urgent SAIT – SARS engagement:

- VAT217s issued without sufficient information.
- Reduced assessments not being issued after successful disputes.
- Stoppers placed on refunds without any notification or communication with tax practitioners.
- Increase in eFiling profile hijackings and fraudulent refund payouts (urgent action is required given the gravity of the situation).
- eFiling infrastructure crashing at critical times.
- Whenever cases need to be finalised, i.e. audits, disputes, refunds, etc. almost 100% of the cases must be escalated in order to be finalised/resolved.
- Large Business Centre not providing the level of service required for large businesses.
- SARS calling tax practitioners' clients directly regarding outstanding tax returns, which had already been submitted by tax practitioners; this brings tax practitioners competency into question in the eyes of their clients.
- Auto-assessments have badly affected businesses which deal primarily with individuals; the three-year prescription period should possibly be extended for refunds in respect of individual returns.
- SARS appointments (both virtual and physical) are limited or unavailable to tax practitioners.
- SARS makes repetitive document requests for verifications/audits in order to buy themselves additional time.

The second leg of the SAIT roadshows will take place between 8 – 12 April 2024 covering the following cities:

- George;
- Nelspruit; and
- Bloemfontein.

Register for the roadshows here.

Government & Stakeholder Newsletters

SARS issues latest Tax Practitioner Connect newsletter

On 27 March 2024, SARS published issue 50 of the Tax Practitioner Connect newsletter. The 50th edition of the newsletter highlights the following issues:

- Information on Employees' Allowances for the 2025 Year of Assessment
- PAYE Employer Reconciliation BRS for the 2025 Tax Year
- Excise: Declaration and Return Submission on eFiling
- Excise Payment and Submission Dates for 2024/2025
- SARS webinar on Digital Channels
- SARS webinar on Trust tax compliance
- Tax Directive System Enhancements Implemented (February 2024)
- Tax Directives: Involuntary Transfer before Retirement

SARS issues the March 2024 edition of the SMME Connect

On 26 March 2024 SARS issued the March 2024 edition of the SMME Connect newsletter. This issue offers simple guides to help SMMEs meet their tax obligation. The issue covers the following topics:

- Remember to File Your Annual Returns with the Companies and Intellectual Property

Commission (CIPC)
- How to File Your Company's Annual Return with CIPC
- Corporate Income Tax
- Turnover Tax
- Administrative Penalties
- How to Pay SARS Debt?
- VAT Enhancements for Estimated Assessments
- PAYE Employer Reconciliation 2025

SARS publishes the latest Government Connect newsletter

On 26 March 2024, SARS published the latest Government Connect Newsletter (Issue 16). Issue 16 of the Government Connect includes information on:

- Employees' Allowances for the 2025 Year of Assessment
- PAYE Employer reconciliation BRS for the 2025 year of assessment,
- SARS webinar on Digital Channels
- Tax directive system enhancements
- Tax directives for involuntary transfers before retirement

SARS publishes the third Traders and Travellers Connect newsletter

On 26 March 2024, SARS published the third SMME Traders Connect Newsletter. The third edition of the newsletter focuses on customs deferments. The newsletter highlights the following topics:

- What is customs deferment?
- What is the deferment qualifying criteria?
- Can the deferment process always be utilised when doing import and export trade?
- How do traders apply for the deferment facility?
- What are the obligations of the deferment facility?
- How to use deferment?

Other Tax practitioner access and functionality publications and announcements

- **26 March 2024:** SARS published the tax workshop schedule for April 2024 for the North West province.
- **26 March 2024:** SARS published the mobile tax unit schedule for April 2024 for the Limpopo province, specifically in Modimolle and Bela-Bela.
- **26 March 2024:** SARS published the mobile tax unit schedule for the Western Cape, which will take place in April 2024.
- **22 March 2024:** SARS released the tax workshop schedule for the Limpopo province for the month of April 2024.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy stakeholder engagement

National Treasury's proposed amendments to Public Sector Pension Laws (reminder)

On 11 March 2024, National Treasury published the proposed amendments to various pieces of legislation governing public sector pension funds. The amendments intend on ensuring the effective implementation of the two-pot retirement system changes in public sector funds. The proposed amendments to the public sector pension laws are listed below:

- Government Employees Pension Law, Proposed amendments two-pot retirement system;
- Telecommunications-related Matters proposed amendments two-pot retirement system and;
- Transnet Pension Fund proposed amendments two- pot retirement system.

The amendments to the public sector pension laws are proposed to be included in the Pension Funds Amendment Bill. Members are encouraged to read the full media statement here.

The Standing Committee of Finance (**SCOF**) convened public hearings on the proposed amendments to the Pension Funds Amendment Bill on 12 March 2024. Written comments were received from ASISA, IRFA as well as Cosatu. On 19 March 2024, the SCOF convened a public hearing to afford National Treasury an opportunity to respond to submissions received from the above-mentioned stakeholders.

National Treasury's response addressed, *inter alia*, the following aspects:

- New definition of pension interest;
- Application clause between Divorce Act and Pension Funds Amendment Bill;
- Section 19(5) on loans and guarantees;
- Section 37D related deductions; and
- Clarification and corrections regarding the drafting style adopted.

Members are encouraged to read National Treasury's full response here.

Legislation

There are no legislative updates were published for the week of 21 - 27 March 2024.

LEGISLATIVE INTERPRETATION

Calls for comment submitted (Reminder)

On 15 March 2024, the SAIT Tax Technical team together with select members of the SAIT Personal and Employment Taxes Technical workgroup made submission to SARS regarding the draft interpretation note (**draft IN**) pertaining to the consequences of an employer's failure to deduct or withhold employees' tax with reference to the Fourth and Seventh Schedule of the Income Tax Act 58, 1962 ('ITA'). The draft IN explains how certain of the employees' tax obligations of an employer and the income tax obligations of an employee operate in relation to each other when an employer incurs personal liability for failing to deduct or withhold employees' tax.

In analysing the draft IN and providing commentary, the SAIT Tax Technical team and select members of the Personal and Employment Workgroup identified numerous aspects that require clarification. The following submissions were made in relation to the sub-topics below:

1. **The application of paragraph 5(5) of the Fourth Schedule to the Act in the case where the employer releases an employee of a debt (or does not recover an amount of employee's tax paid by same)**

   Submission

   "To the extent that there is a gross up of the tax paid by an employer on behalf of an employee an additional fringe benefit arises under paragraph 2(h) of the Seventh Schedule (as stated in the draft IN under paragraph 4.4.2.).

   Where the gross-up is performed, the nature of the PAYE liability changes and the full grossed-up amount becomes 'remuneration' paid by the employer to the employee and such amount should be allowed as a deduction in the hands of the employer.

   We propose that the draft IN be amended to clarify that the gross up amount is 'remuneration' and an allowable deduction in the hands of the employer."

2. **The timing of inclusion of additional taxable benefit in the case that an employee is released of debt and where a gross up is performed**

   Submission

   "We propose that SARS consider only including the grossed-up benefit and the tax thereon in the year that the additional taxable benefit arises, i.e. when the employee is released of the debt.

   This will align the timing of the inclusion of the taxable benefit in the hands of the employee and the claiming of the corporate tax deduction and will ensure that the employer is not subject to excessive interest."

3. **Absolving employer of its personal liability (application of paragraph 5(2)**

   Submission

   The draft IN specifically excludes a discussion of the requirements for granting absolution in terms of paragraph 5(2) of the Fourth Schedule to the Act, from the scope of the draft IN. The provisions of Paragraph 5(2) are worded in very broad terms and its application is the cause of much confusion amongst employers. We, thus, requested that clarification of these requirements be provided in the finalised version of this draft IN.

The submission also provides commentary on the consequences for employees, the possibility of double taxation and miscellaneous matters. Members are encouraged to study the submission for greater detail.

Legislative interpretation calls for comment (Reminder)

SARS and National Treasury issued the following calls for comment:

- Draft Interpretation Note - Consequences of an employer's failure to deduct or withhold employees' tax.

- Draft Revenue Laws Amendment Bill, 2024 - is aimed largely at clarifying the existing language and to simplify the directives system for both administrators and SARS to allow for an efficient implementation of the 'two-pot' retirement reform.
- Draft Global Minimum Tax Bill, 2024 - is aimed at implementing the GloBE Model Rules in South Africa to enable South Africa to impose a multinational top-up tax at a rate of 15 per cent on the profits of in-scope multinational enterprise groups.
- Global Minimum Tax Administration Bill, 2024 -is aimed at the administration of the Draft Global Minimum Tax Bill.
- Draft Rates and Monetary Amounts Bill, 2024

For more information on the calls for comment, click here.

Legislative counsel publications (Reminder)

On 18 March 2024, SARS has published three Rulings relating to apportionment. The Rulings are issued in response to an application bought forward by the Applicant(s) and clarify how the Commissioner would interpret and apply the provisions of the Value-Added Tax Act, relating to the specific proposed transactions outlined in the Rulings.

The Rulings are to be treated as Binding Private Rulings (BPR) and the details as respects each Ruling is as follows:

1. VR 006 - This Ruling approves the **varied turnover-based method of apportionment which is applied to a vendor in the asset-based financial services.** The Applicant is the holding company of various local and foreign subsidiaries that operates through a Holdings Division (that services local subsidiaries) and the Africa Holdings Division (that services foreign entities). The Applicant provides administrative support and management services to these various group companies for which it charges fees on an ongoing basis.

   The Ruling is valid from 18 March 2024 and applicable retrospectively to the financial year commencing 1 January 2022 and will remain valid until 31 December 2025.

2. VR 007 – This Ruling approves the **varied turnover-based method of apportionment which is applied to a vendor in the micro-lending industry.** The Applicant is a special purpose vehicle that purchases instalment credit agreements from a financial services provider under a securitisation transaction. The Ruling is valid from 18 March 2024, is applicable retrospectively to the financial year commencing on 1 July 2023 and is valid until 30 June 2026.

3. VR 008 - This Ruling approves the **varied input-based apportionment method which is applied to a vendor in the short-term insurance industry.** The Applicant is a short-term insurance company that conducts short-term insurance operations and related investment activities.

   The Applicant has approached the Commissioner requesting the issuance of a Ruling confirming that the vendor may apply the varied input-based method by:
   - excluding expenses incurred relating to local reinsurance recoveries; and
   - excluding expenses incurred relating to foreign reinsurance recoveries, with effect from the commencement of the Applicants 2024 financial year.

   The Ruling is valid from 18 March 2024 and applicable retrospectively to the financial year commencing on 1 July 2023 and is valid until 30 June 2026.

Court cases published.

No new court cases were published in the week of 21 - 27 March 2024.

Other SARS publications and announcements

No other SARS publications and announcements were made for the week of 21 – 27 March 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

Extension of the period for public comments on the Amendments to The National Treasury Regulations 16 and Municipal Public Private Partnership Regulations

On 19 February 2024, National Treasury published the amendments to the National Treasury Regulation 16 and the Municipal PPP Regulations for public comment. A detailed explanatory note on the amendments may be accessed here.

The closing date for these comments was within 30 days of date of publication. However, to allow stakeholders an extended opportunity to provide comments, this period has been extended to **15 April 2024**.

Written comments on the proposed amendments may be submitted to CommentsPPPDraftLegislation@treasury.gov.za.

SAIT Technical
(T) 012 941 0412
(E) taxassist@thesait.org.za