TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 28 Mar - 03 Apr 2024
(Issue 12 -2024)

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TOP STORIES

SAIT Tax Technical Work Groups responds to long-awaited draft legislation seeking to implement Pillar Two in South Africa

In response to the draft legislation that was issued by National Treasury and SARS pertaining to the implementation of the Global Minimum Tax in South Africa, the SAIT Tax Technical team together with the International Business Tax and Mining Industry Tax Technical teams have submitted commentary thereto.

The submissions canvass commentary regarding the effective date and ambulatory approach of the legislation. The submissions also canvass the interplay of the Global Minimum Tax with specific domestic legislation and country specific dynamics such as the business tax and government incentive tax regime.

Members can read more about this below.

SARS announces 2023/2024 preliminary revenue results

On 2 April 2023, SARS announced the 2023/43 preliminary revenue collection results, which reflected an unexpected growth despite the projections made by the Minister of Finance in the budget. SARS also recorded the highest revenue collections since the dawn of our democracy. For context, over the last 4 days of March 2024, SARS collected over R114 billion, which was about the same amount collected throughout 1994/95.

For the first time since its inceptions, SARS collected a record gross amount of R2.155 trillion. As of 31 March 2023, the net collection amount was R1.741 trillion after accounting for the R414 billion in refunds paid to taxpayers between 1 April 2023 and 31 March 2024.

For more details on the preliminary revenue results, read here.

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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

Highlights from the March 2024 SAIT/SARS escalations

Over the course of March 2024, SAIT received and validated 161 escalations cases relating to long outstanding cases not finalised by SARS within the prescribed timeframes.

Upon further analysis of the escalations, the top five escalations relate to:

1. Delays in the finalisation of verifications (for personal income tax and VAT);
2. Delays in the payment of VAT refunds;
3. SARS not responding to deferral payment arrangement and compromise requests;
4. Deceased estate compliance letters not being issued; and
5. SARS not responding to disputes within the prescribed turnaround time.

We further noted a decrease in the number of escalations relating to outstanding registered representative requests.

For assistance with an escalation, members may submit a SARS Escalation query on the SAIT Helpline and provide details relating to the query, including:

- Taxpayer tax reference number;
- SARS case number;
- Taxpayer's region of registration;
- Date documents were submitted to SARS;
- Tax period (if applicable); and
- A brief summary of the case.

Reminder on the 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.

Reminder on the Issues with the ITR14 return not opening and not saving completed data

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.

Reminder on the renewed concerns over eFiling profile hijackings and fraudulent refunds

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. Delay in the finalisation of VAT verifications and subsequent payment of refunds;
2. Delay in issuing Deceased Estate Compliance letters; 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

Feedback from the Eastern Cape regional RCB/SARS meeting held on 26 March 2024 can be accessed here.

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
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

SARS announces 2023/2024 preliminary revenue results

On 2 April 2023, SARS announced the 2023/24 preliminary revenue collection results, which reflected an unexpected growth despite the projections made by the Minister of Finance in the budget. SARS also recorded the highest revenue collections since the dawn of our democracy. For context, over the last 4 days of March 2024, SARS collected over R114 billion which was about the same amount collected throughout 1994/95.

For the first time since its inceptions, SARS collected a record gross amount of R2.155 trillion. As of 31 March 2023, the net collection amount was R1.741 trillion after accounting for the R414 billion in refunds paid to taxpayers between 1 April 2023 and 31 March 2024.

The below table provides context on the year-on-year revenue growth achieved by SARS over the last three fiscal years.

	2022	2023	2024	Growth percentage
Total collections	R1.885 trillion	R2.068 trillion	R2.155 trillion	4.2%
Total refund paid	R321.1 billion	R381.1 billion	R414 billion	8.6%
Net revenue collection	R1.564 trillion	R1.687 trillion	R1.741 trillion	3.2%

The achievement of R1.741 trillion represents year-on-year a growth of 4.6% against a nominal GDP growth of below 1%, which is a decrease from the 7.86% growth achieved during 2022/2023 fiscal years.

Although a growth was recorded, several concerning factors were identified which still hinder revenue collections. Amongst others, electricity supply and loadshedding continues to affect business growth and profitability. Additionally, logistical challenges at South African ports continue to affect trade and the economy's growth.

Tax crime and debt recovery also remains a concern globally. Notwithstanding, SARS was able to successfully stop R101 billion in fraudulent refunds and successfully prosecuted many of these cases.

Compared to the 2023 revenue outcome, below is the growth/decline percentages per tax type:

	2023	Growth /decline percentage
Personal Income Tax	R651.4 billion	**8.2%**
Corporate Income Tax	R316.8 billion	**8.9%**
Value-Added Tax	R447.8 billion	**6.0%**
Customs and other taxes	R70.6 billion	**4.5%**

On a positive point, voluntary compliance has grown from 61.6% to 63.9% from the 2022/23 to 2023/24 fiscal years. According to a SARS survey, public confidence in SARS has also increased from 71.8% to 77.5%.

The SARS Commissioner, Edward Kieswetter, also highlighted some concerns around delinquent tax practitioners. Tax practitioners are still considering key stakeholders within the tax ecosystem. That stated, tax practitioners, as tax advisors to taxpayers, are held to higher standards due to their influence over taxpayers.

As of 31 March 2024, 53 registered tax practitioners remained non-compliant in their personal taxes. Eight of these tax practitioners were deregistered and some have criminal investigations ongoing against them. Also concerning is the underestimation and payment of taxes by tax practitioners. To illustrate this, SARS Commissioner indicated that over 14 law firm partners were underestimating provisional taxes and were required to top-up after paragraph 19(3) revisions were made.

Notwithstanding all the challenges, the SARS Commissioner has thanked all compliant taxpayers and traders for contributing to this significant revenue outcome, including:

- Over 62 million citizens who contribute to VAT;
- 28 million registered individuals and trusts;
- 4 million companies;
- 1 million VAT vendors;
- 650 000 employers; and
- 380 000 traders.

Other SARS and related operational publications and announcements

No other SARS and related operational publications and announcements were made for the period 28 March – 3 April 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 of 28 March – 3 April 2024.

Key tax practitioner news

Reminder on the 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

Reminder that SARS issued 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

Reminder that SARS issued 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

Reminder that SARS published 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

Reminder that SARS published 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

- **3 April 2024:** SARS announced that they would be upgrading the eFiling platform on Friday, 5 April 2024 from 18:00 -22:00 and again on Saturday, 6 April from 20:00 -22:00. During this time, the system will be unavailable.
- **3 April 2024:** SARS published the tax workshop scheduled for the Mpumalanga province during April and June 2024.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy stakeholder engagement

Calls for comment submitted

On 21 February 2024, National Treasury and SARS jointly published *inter alia* the Draft Global Minimum Tax Bill which is aimed at implementing the GloBE Model Rules in South Africa by imposing a top-up tax of 15 percent on the profits of in-scope multinational enterprise groups.

National Treasury also published the Draft Global Minimum Tax Administration Bill which is aimed at the administration of the Draft Global Minimum Tax Bill when it comes into effect as an Act upon promulgation.

International Business Tax Technical Work Group

To this end, on 31 March 2024, the SAIT Tax Technical team together with the SAIT International Business Tax Technical Workgroup submitted commentary to the National Treasury and SARS regarding the draft Global Minimum Tax Bill ('the draft Bill') and draft Global Minimum Tax Administration Bill ('the Administration Bill') pertaining to the introduction and implementation of the GloBE Model Rules in the South African context.

In analysing the draft Bill and providing commentary, the SAIT Tax Technical team and select members of the SAIT International Business Tax Technical Workgroup identified numerous aspects that require clarification pertaining to the draft Bill and regarding the operation of the global minimum tax. The following comments were contained in the submission that was made to National Treasury and SARS.

1. Clarification regarding the meaning of effective date

The draft Administration Bill stipulates that the global minimum tax will be deemed to retrospectively come into effect on 1 January 2024 and applies to fiscal years beginning on or after that date. To a certain extent, a fiscal year and a tax year of assessment correspond in nature. However, at times, there are exceptions specifically when a fiscal year does not correspond with a tax year of assessment. In these cases, there may be a delay in the collection of the Global Minimum Tax.

Submission

"We request that clarity be provided on whether the retrospective start date of 1 January 2024 is meant to apply to years of assessment beginning on or after 1 January 2024."

2. The Ambulatory Approach

The draft Explanatory Memorandum on the Global Minimum Tax Bill stipulates the adoption of an ambulatory approach to the application of the GloBE Model Rules and Commentary. An ambulatory approach means that 'the reference in domestic law automatically updates every time the Commentary and Administrative Guidance is updated'.

National Treasury envisages that this approach will ensure consistent application of the GloBE rules in line with the policy intention. However, the rudimentary application of an ambulatory approach may *prima facie* float the sovereignty of the South African legislature. The automatic nature of the proposed ambulatory approach implies that unilateral acts of an independent organisation such as the Organisation for Economic Co-operation and Development (OECD) will be legislated into our domestic law without going through necessary constitutional or administrative processes.

Submission

"Clarity should be provided regarding how the necessary legal and administrative processes will be complied with each time that there is an update to the OECD documentation relevant to the Global Minimum Tax."

3. Clarity regarding application of the Globe Model Rules

Section 2(a) of the draft Bill the GloBe Model Rules will apply *"consistently with the most recent commentary to the GloBE Model Rules before the start of the Fiscal Year in which the time falls."* This wording refers to the most recent commentary before the start of the fiscal year in which the time falls.

On the basis that an ambulatory approach denotes automatic update of domestic law, it is unclear whether this proposed section should be interpreted to mean that the taxpayer must apply the latest commentary before the year in which the applicable tax return is being completed to, or whether the taxpayer should apply the commentary at the time that the tax return is being completed in (even though that time may be at a much later stage).

Submission

The application of the incorrect commentary may potentially affect the performance of calculations and the completion of the necessary tax returns. Therefore, clarity is sought regarding the interpretation of section2(a) of the draft Bill, in particular, the meaning of the phrase 'most recent commentary' in section 2(a) of the draft Bill.

Additional commentary

The submission further canvasses the implication of the draft Bill on record retention requirements, the interaction of business tax incentives and other government grants with the global minimum tax regime, the exclusion of domestic taxes on foreign income, the application of the Income Inclusion Rule, the tax treatment of the translation of top up tax into rands and constituent entity liability. Members are encouraged to study the submission for greater detail. Additionally, in the coming weeks the SAIT Technical team will issue a detailed advisory regarding the proposed implementation of the Global Minimum Tax.

Mining Industry Tax Technical Work Group

The SAIT Tax Technical team together with the SAIT Mining Industry Tax Technical Workgroup submitted commentary to National Treasury and SARS regarding the draft Bill and the draft Administration Bill.

The submission made by the SAIT Mining Industry Tax Technical Workgroup addressed *inter alia* the following aspects:

1. Clarification regarding the interplay of the Global Minimum Tax and Rehabilitation Trusts

Section 37A of the Income Tax Act, No. 58 of 1962 (the Act) outlines the tax treatment of payments made by persons to a mining rehabilitation company or trust where that company or trust has been established for the purposes of conducting rehabilitation activities in the respective community where mining activities took place.

The aim of section 37A is to align tax policy with environmental regulation and essentially regulates mining rehabilitation companies or trusts for income tax by requiring that the funds or assets of the rehabilitation company or trust be applied solely for a purpose stated in section 37A(1)(a) of the Act before a deduction of contributions made to the mining rehabilitation company or trust during a year of assessment may be considered.

Following on from the above, mining rehabilitation trusts are thus treated differently in terms of our domestic tax law. For example, interest income received or accrued in a rehabilitation trust fund account is generally exempt from a tax point of view. However, on the basis that rehabilitation trusts are not excluded from the ambit of this draft Bill –the assumption is thus that the aforementioned income categories would need to be taken into account for purposes of the calculation of the Global Minimum Tax. This could potentially create misalignment with the objects of the draft Bill and the existing domestic tax law surrounding rehabilitation trusts.

Submission

"We therefore request that consideration be given to excluding rehabilitation trusts from the scope of the provisions of the Global Minimum Tax."

The submission also provides commentary on the accounting treatment and the treatment of deferred tax assets as well as the treatment of mining royalty taxes in relation to the object of the Global Minimum Tax. Members are encouraged to access the submission for further details.

The SAIT Technical team will issue a detailed advisory regarding the Global Minimum Tax and the various submissions made the abovementioned Tax Technical Work Groups.

Legislation

There are no legislative updates for the week 28 March – 3 April 2024.

Legislative interpretation calls for comment

No new calls of comment were issued for the week of 28 March – 3 April 2024.

Legislative counsel publications

No new legislative counsel publications were issued for the week 28 March – 3 April 2024.

Court cases published

No new court cases were published in the week of 28 March – 3 April 2024.

Other SARS publications and announcements

No other SARS publications and announcements were made in the week 28 March – 3 April 2024.

Reminder on the 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.

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