

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 11 - 17 April 2024
(Issue 14 -2024)

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TOP STORIES

SARS moves forward with the modernisation of trust disputes

As part of the SARS 2024 vision, the revenue collection agency is still moving full steam ahead with modernising the trust disputes. Historically, trust disputes were wholly handled manually, on a paper-based system, by completing a manual ADR1 or ADR2 form for an objection and appeal, respectively.

In 2023, the ADR1 and ADR2 forms were moved to digital forms to be completed on Adobe. Although this was considered as progress, the forms still needed to be sent via email, have a case number allocated and send supporting documents on the SARS online query system.

SARS has now announced that the trust disputes will be migrated to eFiling by the end of April 2024. This means that the prescribed form for trust objections and appeals will move from the ADR1/ADR2 to the NOO01 and NOA01. Supporting documents will also be submitted on eFiling and all outcomes for trusts disputes will be available on eFiling.

"SARS should not seek to exact tax which is not due and payable" - Capitec Bank Limited v SARS

The Constitutional Court has provided clarity in the long-standing matter between SARS and Capitec Bank regarding the interpretation and application of section 16(3)(c) of the Value-Added Tax Act as relating to the provision of loan cover.

Section 17 of the VAT Act, outlines that if acquired supplies are used by a vendor for dual purposes, taxable and exempt, the amount of VAT on those supplies deductible as input tax requires an apportionment of the VAT. However, the taxpayer argued that as a vendor, it is entitled to a deduction in full in terms of section 16(3)(c), provided that the supply of the loan cover pertained to the making of taxable supplies, even if it did not pertain exclusively to taxable supplies. Thus, Capitec Bank sought to deduct the full amount and had not pleaded apportionment.

SARS disallowed the entire deduction – a position upheld by the Supreme Court of Appeal.

The Constitutional Court has now clarified that "although the loan cover was supplied free of charge, this did not disqualify it from being a taxable supply" and as a result SARS should not have disallowed the deduction in full. The Constitutional Court held that the loan cover was a mixed supply and although the taxpayer did not plead apportionment, this should not have precluded SARS for exacting the principles thereof to this matter.

This judgment is a reminder that it is important for SARS not to seek to exact more tax which is not due and payable. Thus, when SARS is aware of the correct approach, it should apply that correct approach right away as opposed to waiting for the taxpayer to plead so.

Read this judgment for further detail [below](#).

[#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

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Suspension of payments for estimated assessments not working as promised

At the beginning of 2024, SARS started implementing more estimated assessments, specifically for VAT where supporting documents were not submitted during the verification.

In terms of Section 95 of the Tax Administration Act, No. 28 of 2011 (TAA), an assessment issued in terms of section 95(1)(c) is not subject to objection and appeal and a taxpayer must submit the outstanding supporting documents instead. Although not a formal dispute, SARS had advised that a suspension of payment in terms of section 164 of the TAA could be applied for if the estimated assessment resulted in a tax debt owing to SARS. It was expected that this function would be available on eFiling.

At the recently held Gauteng South region meeting held on 10 April 2024, it was unfortunately confirmed that the function is not available on eFiling and a manual suspension of payment request must be submitted for consideration by SARS. The request should be submitted via email (pcc@sars.gov.za) and it is anticipated that this would be treated as a 'request for service' case and a 21-business day turnaround time will apply.

Update on renewed concerns over eFiling profile hijackings and fraudulent refunds

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

Upon analysis of these cases, the following similarities were identified:

- Security contact details are changed, and a tax-type transfer is requested and approved to transfer the profile;
- Fraudulent returns are submitted to create fictitious refunds (this happens across all tax types);
- Banking details changed in an effort to receive the fraudulent refund (majority of the banking details are changed to a Tyme Bank account); and
- If the refund is not paid out immediately, statements of accounts are requested daily to check on the status of the refund.

*Over the past week, SAIT escalated 9 separate eFiling profile hijacking cases to the SARS Head Office for urgent investigation and recovery of the profiles.

Since SARS migrated the function to report digital fraud to the SARS Online Query System, members who have identified any digital fraud are encouraged to report those cases to SARS and on the SAIT [TaxHelpline](#). Members are reminded to include the date of the suspected breach, the SARS Fraud case number and whether any fraudulent returns have been submitted or fraudulent refunds have been obtained.

SAIT has also tabled this issue as an agenda item for discussion at the upcoming national operations meeting with SARS on Thursday, 18 April 2024. We will provide additional feedback on the way forward thereafter.

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. eFiling profile hijacking cases;
2. Delay in the finalisation of VAT verifications and subsequent payment of refunds;
3. Delay in the processing of manual assessments; and
4. 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).

Feedback from the RCB/SARS regional and national meetings

Feedback from the Gauteng South regional meeting which took place on 10 April 2024 can be accessed [here](#).

Feedback from the SARS National Operations meeting held on 18 April 2024 will be available in issue 15 of the Tax Practice: Weekly Highlights.

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Gauteng North for 23 May 2024;
2. Western Cape for 5 June 2024;
3. Free State and Northern Cape for 10 June 2024;
4. KwaZulu-Natal 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. KwaZulu-Natal for 9 September 2024;
9. Free State and Northern Cape for 11 November 2024;
10. Gauteng South for 13 November 2024;
11. Gauteng North for 21 November 2024; and
12. KwaZulu-Natal for 25 November 2024.

Other meetings of interest

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

DAILY COMPLIANCE AND ADMINISTRATION

Due dates for reporting and payments: 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 implements changes to medical aid third-party data

SARS will be implementing changes in the medical aid third-party data reporting. SARS has identified some challenges faced by taxpayers in submitting medical aid data accurately and on time. To simplify this process and reduce the burden on taxpayers, SARS is making changes on the data that is required from medical aid schemes.

The changes include:

- Provision of data on disabled principal members and their dependents.
- Data of persons making payment on behalf of principal members.
- Separate non-allowable from the allowable expenses, currently reported as claims not paid or covered by medical schemes on the IT3(f) certificate.

These changes will also allow SARS to reduce audit interventions, and enable speedy assessment of tax returns, and assist in allocating medical tax credits to the correct taxpayers. From **September 2024**, medical aids are expected to provide the requested data in line with the conditions outlined in the [external Medical Scheme Contributions Business Requirement Specification \(BRS\)](#).

To allow for a smooth transition, SARS will grant a grace period of 6 months for partial submission of the requested data while stakeholders attain resources that consent to full compliance. Where such cases of partial compliance occur, reasons and a commitment date for full compliance will be required.

To assist taxpayers and tax practitioners with the long-term effect of these changes, SAIT will be preparing an advisory, which will be published in issue 15 of the Tax Practice: Weekly Highlights.

Reminder on final reminder to submit Beneficial Ownership information to CIPC

All companies and close corporations must file their annual returns with the Commission, together with their beneficial ownership declaration and security register or beneficial interest register (as applicable) within 30 business days after their anniversary date.

CIPC started to strictly enforce the filing of Beneficial Ownership Declarations information with the filing of Annual Returns, as from 15 April 2024. In terms of this hard-stop functionality, companies and close corporations will no longer be allowed to file their Annual Returns via any of the CIPC electronic platforms UNLESS BO has been submitted and/or is up to date. As per the Act, as amended, BO, AFS/FAS must be filed with Annual Returns.

Therefore, if BO is not up to date, the company or close corporation may:

- Incur penalties for the late filing of Annual Returns;
- Enforcement action may be taken by the CIPC through investigation into the administration and governance processes of your business and even the issuing of a compliance notice; and/or
- Referral for deregistration and even final deregistration due to non-compliance.

For more information, read [here](#).

Reminder on employer Annual Declarations (EMP501): 1 April to 31 May 2024

The Employer Annual Declaration period commenced on 1 April and will close on 31 May 2024. During this period, employers must submit their annual reconciliation declarations (EMP501) with accurate and up-to-date payroll information about their employees. The EMP501 must include:

- Monthly employer declarations (EMP201) for PAYE, Unemployment Insurance Fund contributions (UIF), and the Skills Development Levy.
- Information about payments made (excluding penalties and interest paid).
- Employee tax certificates (IRP5/IT3(a) generated) covering the tax year from 1 March 2023 to 29 February 2024.

To ensure that an EMP501 has been successfully filed with SARS, it is vital to monitor the status of submissions. As a result, if a submission is rejected because it is incomplete or has a data error, it is considered not to have been submitted, and you will be liable for non-compliance penalties.

Submitting an incomplete EMP501 or submitting an EMP501 after the due date will result in administrative penalties, amounting to 1% of the year's PAYE liability. This penalty increases by 1% monthly, reaching up to 10% of the year's PAYE liability.

Reminder on Third Party Data Annual Submissions now open

SARS' third-party data annual submissions opened on 1 April 2024 and will close on 31 May 2024. Third parties must submit accurate and complete data for the entire period of 1 March 2023 – 29 February 2024.

Third parties (banks, medical schemes, fund administrators, among others.) must, by law, send data to SARS via a return. They must include information such as:

- savings account interest;
- medical scheme contributions;
- withholding tax on interest
- dividends tax;
- IT3 data submissions: IT3(b), IT3(c), IT3(e), IT3(s); and
- medical scheme contributions, and insurance payments.

Third-party data providers can submit data to SARS using these three electronic options:

1. eFiling (via a data submission form with a limited volume)
2. Connect: Direct® (Unlimited)
3. Secured File Gateway [HTTPS] (for files smaller than 10MB)

To ensure a successful submission to use and activate these channels, the third-party data provider must be registered with eFiling.

Other SARS and related operational publications and announcements

- **16 April 2024:** SARS has identified a [new scam](#) doing the rounds including a letter of demand. Taxpayers are urged not to open any links contained in the email and delete the email immediately.

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 11 – 17 April 2024.

Key tax practitioner news

Tax practitioners given green light to represent their clients in South African Tax Courts

After a lengthy legal battle between the CSARS and Ms Candice-Jean van der Merwe, on 2 April 2024 a full bench of the High Court (Western Cape division) has decided that there is no statutory provision that limits the right of representative appearance in the Tax Court to legal practitioners.

Consequently, on the basis that the full bench of the High Court (Western Cape division) has ruled that South Africa's tax courts are courts of revisions and not "courts of law", tax practitioners are permitted to represent their clients in tax disputes that have been brought before any of South Africa's tax courts.

Read more about this judgment [below](#).

Government & Stakeholder Newsletters

OTO publishes the latest FairPlay stakeholder newsletter

On 16 April 2024, the Office of the Tax Ombud published the 32nd edition of the [FairPlay stakeholder newsletter](#). Issue 32 covers the theme 'Striking a balance: *The relationship*

between taxpayers' rights and the powers of the tax authority is a delicate balance.'

Amongst others, the newsletter covers guest contributors who cover the following topics:

- Striking a balance: Taxpayer rights and compliance in South Africa;
- Taxpayer tips when dealing with SARS; and
- Tackling your tax disputes with Yilungelo Lakho.

Reminder on SARS issuing the latest Tax Exempt Institutions Connect newsletter

On 9 April 2024, SARS published issue 4 of the [Tax Exempt Institutions Connect](#) newsletter. The 4th edition of the newsletter highlights the following issues:

- Financial Action Task Force (FATF) Update and Feedback;
- Third-Party Data Submissions to SARS — IT3(d) Update;
- World NGO Day — 27 February 2024;
- Taxation of Bodies Corporate, Share Block Companies, and Home Owners' Associations; and
- Queries and Escalations.

Other tax practitioner access and functionality publications and announcements

- **16 April 2024:** The SARS Durban branch office reopened after water was restored to the office. SARS has apologised to all stakeholders for the inconvenience caused by the closure.
- **15 April 2024:** Due to water interruptions, the Durban branch office remained closed on Monday 15 April 2024. SARS apologised for the inconvenience that was experienced by taxpayers and traders following the closure of the office.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

LEGISLATIVE INTERPRETATION

Legislation

There are no legislative updates for the week 11 – 17 April 2024.

Legislative interpretation calls for comment

No new calls of comment were issued for the week of 11 – 17 April 2024.

Legislative counsel publications (Reminder)

On 5 April 2024, SARS published [Binding General Ruling \(VAT\) 69](#) (BGR VAT 69) which sets out the further particulars - prescribed by the Commissioner under section 54(2C) of the Value-Added Tax Act No.89 of 1991 (the VAT Act) - that the agent must obtain and retain on behalf of the principal depositor, as well as the records to be maintained under section 54(3).

The facts of [BGR VAT 69](#) relate to the documentary obligations of agents who are required to adequately and accurately account for VAT in relation to the sale and exportation of refined gold by agents.

The main purpose of gold refineries is to refine and smelt gold or ore received from depositors. Generally, refineries also act as agents and sell or export gold on behalf of these depositors to *inter alia* members of the London Bullion Bank, the South African Reserve Bank, the South African Mint and registered Banks. In terms of section 54C of the VAT Act, refineries are allowed to issue invoices in relation to the supplies made on behalf of the depositors. However, the depositor of the gold or ore remains the principal in respect of the supply of gold, as well as the export of the gold.

At any given point, gold or ore that is received from several depositors undergoes the process of refinement and smelter and is amalgamated in order to make up an appropriate volume ordered for sale or export. During this process of refinement, the individual deposits received are co-mingled to the extent that each deposit effectively loses its identity as belonging to a specific depositor. Notwithstanding the above, because gold is a highly regulated commodity, vendors are required to properly and adequately account for VAT. Therefore, albeit refineries (agents) act on behalf of depositors in the sale or export of gold, agents are still required to transmit necessary documents to each depositor of gold for their record purposes.

Resultantly, in section 54(2C) of the VAT Act, the Commissioner has prescribed the acceptable documentary evidence that the agent must obtain and retain for purposes of gold being supplied as contemplated in section 11(1)(f) of the VAT Act. The provisions of section 54(3) of the VAT Act stipulate that the agent must maintain sufficient records in respect of tax invoices, debit notes, or credit notes issued on behalf of a principal under section 54(1) of the VAT Act.

Members may access [BGR VAT 69](#) for full detail relating to the:

- Specific particulars that the Sale of Gold Certificate must contain (as per section 54(3) of the VAT Act; and
- Specific documents that the agent must obtain and maintain in the case of the exportation of gold.

Court cases published

On 12 April 2024, SARS published the following Constitutional Court judgments:

Date of delivery	Case	Applicable legislation
12/04/2024	Capitec Bank Limited v CSARS (CCT 209/22)	Value Added Tax Act, 1991
<p>Summary: The case raises questions about the interpretation and application of section 16(3)(c) of the Value Added Tax Act ('VAT Act'). In submitting their VAT return for November 2017, the taxpayer deducted an amount in terms of section 16(3) of the VAT Act. SARS disallowed the deduction, which it gave effect to by issuing an additional assessment. SARS pleaded that the loan cover payments did not qualify for "input tax deduction" in terms of section 16(3)(c), on the basis that the supply of the loan cover did not constitute a "taxable supply".</p> <p>The Tax Court concluded that the requirements of section 16(3)(c) were satisfied and upheld the appeal. The Supreme Court of Appeal (SCA) upheld SARS' appeal against the Tax Court's order, replacing the latter order with one dismissing the taxpayer's appeal to the Tax Court. The Constitutional Court set aside the orders of the Tax Court and SCA. The Constitutional Court further held that where a taxpayer has failed to plead apportionment, it should not result in them being deprived of any deduction. The Court stated it was incorrect for SARS to have disallowed the deduction in full. In this regard the Court therefore ruled that the assessment for the applicants November 2017 VAT period be remitted to SARS for examinations and assessment in accordance with the principles set out in this judgment.</p>		

On 12 April 2024, SARS published the following Tax Court judgments:

Date of delivery	Case	Applicable legislation
20/03/2024	IT 45979	Income Tax Act, 1962
<p>Summary: The case concerned a statutory appeal by the taxpayer in terms of section 107 of the Tax Administration Act 28 of 2011 (the TAA), read with Rule 10 of the Tax Court Rules. The taxpayer appealed against the additional assessments raised by CSARS.</p> <p>The matter concerned whether premiums qualify as deductible expenses under section 11 of the ITA. The taxpayer claimed that the premiums paid constituted insurance expenses and bore the onus of proving that the payments made to Company XYZ were not of a capital nature. The taxpayer failed to demonstrate a sufficient link between its rights to the experience account and the performance of its income-earning operations. The appeal against the additional assessments raised by SARS in respect of the 2018 and 2019 years of assessment accordingly failed, and the taxpayer remained liable for understatement penalty of 10%.</p>		
27/02/2024	IT 45997	Tax Administration Act, 2011
<p>Summary: The matter concerned a condonation application in which the taxpayer sought condonation for the late filing of its rule 36(6) notice. CSARS opposed the condonation application, stating the taxpayer's application for condonation lacked the necessary full explanation required for successful condonation applications.</p> <p>With regards to the approach on the requirements for condonation, the court relied on the requirements set out in the case of <i>Melane v Santam Insurance Co. Limited</i> where, it was stated that, "the court has discretion with regards to deciding if condonation must be granted however, fairness to both parties must be considered. Factors that are relevant include: degree of lateness, explanation, prospects of success and importance of the case".</p> <p>The Court applied the above listed requirements to the facts and found the taxpayer to have successfully met them. Accordingly, the condonation application succeeded, and costs were reserved.</p>		

Other SARS publications and announcements

No other SARS publications and announcements were made in the week 11 – 17 April 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

There are no other matters of interest for tax practice for the week 11 – 17 April 2024.