

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 25 April - 01 May 2024
(Issue 16 -2024)

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TOP STORY

National Treasury provides further clarity on the 'two-pot' retirement system

In a hearing on 25 April 2024, National Treasury has provided further detail regarding the impending implementation of the 'two-pot' retirement system. The 'two-pot' retirement system is going full steam ahead and will be implemented from 1 September 2024.

The 'two-pot' retirement system is a reform that will allow retirement fund members to make partial withdrawals from their retirement funds before retirement, while preserving a portion of their retirement funds that can only be accessed at retirement to help improve retirement outcomes. Essentially, the 'two-pot' retirement system is aimed at supporting and preserving long-term retirement savings while offering flexibility of access to help fund members in times of financial distress.

From 1 September 2024, members will have access to 'seeding capital' which is the lower of 10% or R30 000 of a members retirement fund value that will be allocated to the savings component (or 'pot').

Due to the complexities of the 'two-pot' retirement system, National Treasury has provided further clarification and explanation on the implementation thereof. The full presentation may be accessed, [here](#).

[#StayAbreastOfTheTaxWave](#)

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

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

Approximately 500 – 1 500 words

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

eFiling two factor authentication error preventing login

Over the last week, several taxpayers and tax practitioners battled to login into their eFiling profiles due to a technical error. Upon further investigation of these cases, the problem was isolated to the profiles which have a two-factor authentication setting.

Although the two-factor authentication is encouraged to protect the eFiling profile for any unauthorised breaches, it seems that over the past week, it was the cause of the problem. The problem was promptly escalated to the SARS software developers for resolution and a system fix was scheduled and rolled out over the weekend of 27 – 28 April 2024.

Since then, our eFiling technical specialists have also tested the system from Monday, 29 April 2024 and found that although the problem did not immediately resolve, where the practitioner logged into the SARS MobiApp first, they would be able to log into their eFiling profiles.

SAIT is keeping an eye on the issue and will provide feedback on whether the problem persists or have been resolved completely.

Deregistration of tax types and the submission of nil returns for compliance purposes

One of the requirements for the deregistration of a tax type is that the taxpayer must be fully compliant with the submission of all tax returns and payment of all debts prior to the tax type being deregistered.

Unfortunately, in the past, the deregistration cases have far exceeded the 21-business turnaround time, and in most cases, by the time the case is being considered another tax return is due or outstanding, thus impacting the tax compliance status. The natural response of taxpayers and tax practitioners would therefore be to submit the nil value returns, until the deregistration case is finalised, to main the tax compliance status.

On 18 April 2024, during the SARS National Operations meeting, SARS urged taxpayers and tax practitioners to refrain from this practice. This is because, although a deregistration case may not be finalised, a tax number is place under 'suspense' pending the outcome of the compliance audit. The submission of the nil value returns then reactivates a tax type from the suspended status back to the active status. It is in these circumstances that the returns are then considered 'required'.

Unfortunately, there is currently no communication from SARS to the taxpayer stating that a tax type is suspended. However, prior to submitting any nil value returns, taxpayers and tax practitioners are urged to check the status of the tax type on the RAV01 form, under 'My Tax Products'.

Illustrative examples:

Active tax type:

Income Tax		
Reference No.	Account no.	Status
[REDACTED]	N/A	ACTIVE

Suspended tax type:

Income Tax		
Reference No.	Account no.	Status
[REDACTED]	[REDACTED]	SUSPENDED

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Reminder 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 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.

Based on thorough investigations, identified fraudulent activities where users attempt to register to use the eFiling platform, and that compels SARS to embark on an initiative aimed at curbing these illicit activities. A taxpayer will always be required to provide a valid email address and cell phone number to register for and utilise the eFiling service. This information will serve as the eFiling security contact details and will be used to send a one-time-pin (OTP) to authenticate the eFiler.

Should the SARS eFiling system identify that the email address or cell phone number has already been provided by an eFiler and is actively in use (maximum usage reached), an error message will be displayed on the user's screen.

For existing users, SARS has published some tips on how to proactively keep eFiling profiles and client information safe. Access the tips [here](#).

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 the processing of manual assessments; 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).

Feedback from the RCB/SARS regional and national meetings

No RCB/SARS regional meetings were held during the week of 25 April – 1 May 2024.

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. eMalahleni, Mpumalanga for 20 May 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. KwaZulu-Natal for 10 June 2024;
6. Gauteng South for 17 July 2024;
7. Gauteng North for 22 August 2024;
8. Free State and Northern Cape for 9 September 2024;
9. KwaZulu-Natal for 9 September 2024;
10. Free State and Northern Cape for 11 November 2024;
11. Gauteng South for 13 November 2024;
12. Gauteng North for 21 November 2024; and
13. 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: May 2024

Month	Date	Tax Type	Notification
May 2024	07/05/2024	Employment Taxes	EMP201 - Submissions and payments
	24/05/2024	Value-Added Tax	VAT201 - Manual submissions and payments
	31/05/2024	Value-Added Tax	VAT201 - Electronic submissions and payments
	31/05/2024	Employment Taxes	EMP501 - End of the annual employer reconciliation submissions
	31/05/2024	Other	Third-Party Data (IT3) - Close of the annual third-party submissions period

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

Update on SARS' 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 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.

*Important to note: The suspension of payment function will not be included for trusts at this stage. Trusts wanting to apply for suspension of payment must still do so manually.

Reminder on SARS' launch of the new unmerge functionality

Currently, the [Merge functionality](#) available via eFiling, allows the taxpayer or tax practitioner to initiate a merge, which consolidates the entity records and Tax Reference Numbers (TRNs) into a single tax profile.

A new 'unmerge' function has now been introduced and allows SARS branch offices to undo the incorrectly merged case. The unmerge option can only be used if cases have been previously merged or auto merged. The unmerge process will affect the registered details of

the entity. Therefore, it is important to verify and update the registered details on the RAV01 form after the unmerge process was completed.

The following details must be confirmed:

- Demographic information such as contact details/ email / eFiling Security Details;
- Bank details;
- Tax Product Information confirmation; and
- Registered Representative details including confirmation of appointed details on the Registration Amendments and Verification Form RAV01.

Remember to [make an appointment](#) before going to the SARS branch.

Other SARS and related operational publications and announcements

- **30 April 2024:** SARS announced that it would be hosting a series of tax workshops and webinars in the KwaZulu-Natal province, aimed at guiding taxpayers through the employer-reconciliation process.

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 25 April – 1 May 2024.

Key tax practitioner news

No key tax practitioner news were published by SARS for the week of 25 April – 1 May 2024.

Government & Stakeholder Newsletters

Reminder that SARS published the latest Government Connect newsletter

On 19 April 2024, SARS published issue 17 of the [Government Connect](#) newsletter. The 17th edition of the newsletter highlights the following issues:

- Employees' Tax Compliance Starts with You;
- Third-party Data Annual Submission;
- Advancement in requesting SARS certificate for Third-party Data Submission; and
- Enhancement of SARS Online Query System.

Other tax practitioner access and functionality publications and announcements

- **30 April 2024:** SARS [announced](#) that the digital platform would be undergoing upgrades and would be unavailable on Friday, 3 May 2024 from 18:00 – 20:00 and on 4 May 2024 from 22:00 until 02:00 on 5 May 2024.
- **26 April 2024:** SARS announced that the submission platforms for both Secure File Gateway and Connect: Direct would be temporarily offline for planned maintenance between 16:00 and 19:00 on Friday 26 April 2024. During this time, taxpayers and traders were urged not to submit any files in the production and test environments as they would not be processed.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Legislation

No new legislation, international agreements or policy matters were published in the week of 25 April 2024 – 1 May 2024.

LEGISLATIVE INTERPRETATION

Legislative interpretation calls for comment

No new calls of comment were issued by the National Treasury or SARS for the week of 25 April 2024 – 1 May 2024.

Submissions to the National Treasury and SARS

The SAIT Tax Technical team has submitted commentary to National Treasury requesting that previously submitted proposals pertaining to section 42(8) and section 23(c) of the Income Tax Act, No. 58 of 1962 (the Act) be re-considered by National Treasury.

During each Annexure C cycle, SAIT makes submissions to National Treasury requesting that certain amendments be made to the legislation. In previous Annexure C periods, SAIT had submitted commentary regarding the above referred provisions. On the basis that the substantive nature of the proposals and the ongoing problems arising therefrom, SAIT has re-submitted this commentary.

A synopsis of the proposals made are as follows:

Liquidation and unbundling transactions subsequent to asset-for-share transactions, involving the assumption of debt as contemplated in section 42(8)

Proposal

The provisions of section 42(8) should not apply where the transferee company is subsequently liquidated in terms of section 47 or unbundled in terms of section 46 of the Act. This is on the basis that when a taxpayer undertakes a section 42 transaction, the taxpayer would benefit from a 'step-up' in the base cost. However, if the same taxpayer undergoes a section 46 or section 47 transaction, directly thereafter, the contemplated 'step-up' (as per section 42), effectively falls away and the taxpayer does not actually receive the benefit of the 'step-up' in the base cost.

Unintended consequences of section 23(c) of the Act

Proposal

Based on the legal nature of the problem outlined in the submission commentary, it is apparent that there are instances whereby the application of section 23(c) of the Act give rise to inequitable results. It is, therefore, our view that the provisions of section 23(c) of the Act serve no legitimate anti-avoidance purpose and causes unintended consequences for taxpayers. Our submission, thus, proposed that section 23(c) of the Act be repealed.

National Treasury, however, held a different view and stated that there should not be an incidence of inequity since deductions are provided for in other legislative provisions within

the Act. Nevertheless, the SAIT submission annexed thereto legal evidence of the inequitable results that typically arise from the application of section 23(c) of the Act.

Members are encouraged to study the full submission, [here](#). Also, members are welcome to reach out to ksesana@thesait.org.za to obtain the accompanying Annexures that are referred therein.

Legislative counsel publications

On 29 April 2024, SARS published the following interpretation notes:

Interpretation Note 105 (Issue 2): Deductions in respect of buildings used by hotel keepers

With the recent rise in alternative establishments within the accommodation industry, the traditional concept of a hotel has changed in recent years. Therefore, the requirements of section 13*bis*, as these apply to the modern concept of hotel-keeping, have been updated by SARS.

As is common cause, taxpayers incurring a cost in erecting or improving a building or leasing a building for the purposes of conducting the business of a 'hotel keeper' will qualify for the annual allowance on the cost incurred thereon, if the requirements of section 13*bis* are met. Briefly, section 13*bis* provides an annual allowance on the cost of erection of buildings or improvements to such buildings used by the taxpayer in the trade of hotel keeping.

Consequently, [Interpretation Note 105](#) (Issue 2) has been published by SARS with the intention to provide guidance on the interpretation and application of section 13*bis*, which provides for an allowance on any buildings used in the trade of hotel keeper.

As per the legislative interpretation outlined herein:

- the annual allowance is available at different rates depending on when erection of the building or the improvements commenced;
- the annual allowance is granted on the cost to the taxpayer, after adjusting for deferred recoupments and amounts which may qualify for an allowance under section 11(g) of erecting a hotel building or of effecting improvements to such a building; and
- the annual allowance is not apportioned if the building or improvement is used as required for only part of the year.

Members are encouraged to study [Interpretation Note 105](#) (Issue 2) for further detail regarding the legislative interpretation of section 13*bis* as relating to deductions in respect of buildings used by hotel keepers. It must be noted that Issue 1 of this interpretation note published in November 2018 has consequently been archived.

Interpretation Note 131: Exemption of income relating to South African ships used in international shipping

In support of governmental objectives to promote the development of an efficient and productive South African maritime industry capable of competing internationally and to encourage ships to carry the South African flag, section 12Q was inserted into the Act with effect from 1 April 2014 in an aim to provide certain tax relief for qualifying international shipping companies.

The tax relief granted under section 12Q of the Act is only available to a resident company that operates one or more South African ships that are mainly engaged in international traffic for international conveyance of passengers or goods for compensation.

The purpose of the interpretation note is to provide guidance on the interpretation and application of section 12Q of the Act. Section 12Q of the Act provides for an exemption from normal tax, capital gains tax, dividends tax and withholding tax on interest for international shipping companies if the requirements of the section are met. In determining whether an international shipping company qualifies for these exemptions, the definitions of 'South African ship', 'international shipping', 'international shipping company' and 'international shipping income' should be considered and applied to the relevant tax under section 12Q of the Act.

Members are encouraged to study [Interpretation Note 131](#) for further detail regarding the exemption of income relating to South African ships used in international shipping.

Published court cases

SARS has published the following Supreme Court of Appeal judgments:

Date of delivery	Case	Applicable legislation
12/04/2024	Lueven Metals (Pty) Ltd v CSARS (728/2022)	Value Added Tax Act, 1991
Summary: This matter argued whether absent a directive in terms of section 105 of the Tax Administration Act, No. 28 of 2011 (the TAA), the high court could enter into and pronounce on the merits of the application for declaratory relief. Arguments before the Court that were advanced by both counsel was that as there was neither an 'assessment' nor a decision as described in section 104 of the TAA and as the nature of the relief sought was a declaration of rights, the default rule that a taxpayer may only dispute an assessment by the objection and appeal procedure under the TAA, did not find application. Although the minority judgment expressed the view that in the circumstances of the matter the seeking of declaratory relief was appropriate, the majority judgment espoused the view that the above legislative provisions were designed to ensure that the objection and appeal process and the resolution of tax disputes by means of alternative dispute resolution and then the tax board or the tax court be exhausted, before the high court could be approached. The majority judgment further held that a declaratory order was not appropriate if there were other specific statutory remedies available. The media summary of the judgment delivered in the Supreme Court of Appeal may be accessed here .		

Other SARS publications and announcements

No other SARS publications and announcements were made in the week of 25 April 2024 – 1 May 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

There are no other legislative matters of interest relevant for your tax practice for the week of 25 April 2024 – 1 May 2024.