

# TAX PRACTICE

## WEEKLY HIGHLIGHTS

WEEK OF 02 - 08 May 2024  
(Issue 17 -2024)

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### TOP STORIES

#### SAIT releases the April 2024 Member Compliance Report

SAIT has a duty to set professional standards by evaluating, implementing, monitoring and enforcing compliance with industry-specific legislation, regulations and ethics. SAIT has noted that a growing number of members are not compliant in various areas of mandatory compliance and are therefore in default in upholding and maintaining their membership obligations as per membership terms and conditions in line with SAIT policies as well as [SARS Criteria for the Registration of Tax Practitioners and the Recognition of Controlling Bodies](#).

There is a noted increase in SARS deregistrations with the increased enforcement of tax practitioner compliance requirements and rules. Non-compliance may be found on the basis of one, or a combination, of the key areas.

One of our primary goals is to assist our members with remaining compliant and avoiding prosecution and/or deregistration. Should a member have challenges with their respective compliance, there are remedial options and services available to provide the necessary support and assistance through the SAIT Tax Technical and Legal and Compliance Departments. Members are encouraged to reach out and engage with SAIT to remain compliant.

For more detailed information on the compliance report, read [here](#).

#### Taxpayers continue to struggle with the eFiling platform as SARS plans additional upgrades

Every weekend over the past four months, SARS has been planning and conducting maintenance on the eFiling and related digital platforms. Notwithstanding this, users are still experiencing system errors coupled with the inability to access their personal eFiling profile.

In the last week, after the release of a two-factor authentication security feature, many taxpayers and tax practitioners were left without access to their eFiling profiles for up to a week. And although a system fix was rolled out to fix that problem over the weekend of 29-30 April 2024, reports received show that this did very little to resolve the problem.

As of 8 May 2024, SAIT members were still reporting their inability to access their eFiling profile and because the problem lays directly with SARS, SAIT eFiling and e@syFile specialists have been unable to assist.

For more information on this, 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](mailto: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

#### Update on the eFiling two factor authentication error preventing login

Over the past two weeks, 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 was encouraged to protect the eFiling profile for any unauthorised breaches, it seems that over the past two weeks, it was the cause of the problem. The problem was promptly escalated to the SARS software developers for resolution and who advised that a system fix was scheduled and would be rolled out over the weekend of 27 – 28 April 2024.

\*Despite this, our eFiling technical specialists have tested the system and found that although the problem did not immediately resolve, some practitioners were able log into the SARS MobiApp but not on their personal computers.

The matter was reported and re-escalated to SARS who announced a system upgrade from Saturday, 11 May 2024 at 20h00 to Sunday, 12 May 2024 at 00h30.

This error comes, particularly, at a sensitive time as many tax practitioners were required to submit and process payments for their monthly EMP201 returns, which were due on Tuesday, 7 May 2024. Where late payment penalties are levied, taxpayers will need to submit the request for remission of penalties and cite the mitigating circumstances as the eFiling log errors.

SAIT will continue to monitor the situation and engage with SARS on this pressing issue.

#### Reminder on the 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 maintain 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 placed 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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## 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. Notice of objection options not being available on eFiling;
2. Delay in the finalisation of VAT verifications and subsequent payment of refunds;
3. Delay in the finalisation of tax type deregistration; and
4. Delay in the finalisation of requests for reduced assessments.

## 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 2 – 8 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. North West for 3 June 2024;
4. Western Cape for 5 June 2024;
5. Free State and Northern Cape for 10 June 2024;
6. KwaZulu-Natal for 10 June 2024;
7. Gauteng South for 17 July 2024;
8. Gauteng North for 22 August 2024;
9. Free State and Northern Cape for 9 September 2024;
10. KwaZulu-Natal for 9 September 2024;
11. Free State and Northern Cape for 11 November 2024;
12. Gauteng South for 13 November 2024;
13. Gauteng North for 21 November 2024; and
14. 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](mailto:taxassist@thesait.org.za).

## DAILY COMPLIANCE AND ADMINISTRATION

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

Month	Date	Tax Type	Notification
<b>May 2024</b>	07/05/2024	Employment Taxes	<b>EMP201</b> - Submissions and payments
	24/05/2024	Value-Added Tax	<b>VAT201</b> - Manual submissions and payments
	31/05/2024	Value-Added Tax	<b>VAT201</b> - 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

### Reminder 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.

### Other SARS and related operational publications and announcements

- **6 May 2024:** SARS [identified](#) a new scam wherein communication talking about an outstanding debt is sent to unknowing taxpayers. Recipients of the correspondence are advised not to open any links contained therein and to delete the correspondence 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 2 – 8 May 2024.

## Key tax practitioner news

### April 2024 member compliance disciplinary and compliance

In terms of Section 240A of the Tax Administration Act 28 of 2011, all tax practitioners are obliged to register for membership with a recognised controlling body (RCB) as well as SARS. Failure to comply with this provision constitutes a criminal offence.

SAIT has a duty to set professional standards by evaluating, implementing, monitoring and enforcing compliance with industry-specific legislation, regulations and ethics. SAIT has noted that a growing number of members are not compliant in various areas of mandatory compliance and are therefore in default in upholding and maintaining their membership obligations as per membership terms and conditions in line with SAIT policies as well as [SARS Criteria for the Registration of Tax Practitioners and the Recognition of Controlling Bodies](#).

In terms of SAIT Policies, non-compliance in key areas may result in referral to the SAIT Disciplinary Board. The Disciplinary Board may, within its discretion, impose appropriate sanctions and penalties against non-compliant members.

There is a noted increase in SARS deregistrations with the increased enforcement of tax practitioner compliance requirements and rules. Non-compliance may be found on the basis of one, or a combination, of the following key areas:

- Non-compliance with tax (non-submission of returns or tax debt);
- Default in and continued non-compliance with CPD requirements;
- Failure to meet requirements relating to criminal-free status;
- Failure to maintain membership obligations in breach of membership terms and conditions as well as SAIT Codes relating to Professional Conduct and Ethics; or
- Failure to comply with any directive from the SAIT Disciplinary Board in terms of applicable Disciplinary Proceedings and/or Directives.

### Tax practitioner disciplinary cases

The below statistics provide a summary of the trends on non-compliance with statutory requirements and codes of conduct within the disciplinary and compliance space:

Type of Non-compliance	October 2023 – Current Stats
Tax non-compliance	<b>35</b> SAIT-registered Tax Practitioners have been deregistered and suspended from practice for 6 months due to non-compliance with personal tax affairs.
Disciplinary cases reported (unprofessional, negligent and/or unethical conduct)	Currently, the SAIT Disciplinary Committee has investigated <b>9</b> cases of unprofessional and/or unethical conduct referred to it by SARS Tax Practitioner Unit or members of the public.
PI insurance claims (fraud, theft and dishonest conduct)	<b>10</b> cases of fraudulent and dishonest conduct have been reported in the SAIT PI insurance claims history.

### Applicable sanctions and penalties

It is crucial to uphold membership and professional obligations and observe RCB and SARS policies, rules and regulations. Apart from immediate deregistration by SARS for personal tax non-compliance, the SAIT Disciplinary Board may administer any, or a combination, of the following sanctions for contravening and non-compliant members:

- Suspension of membership.
- Termination of membership.
- Imposition of financial penalties.
- Listing on the register of non-compliant members (prohibited from registration with alternative controlling bodies as enforced by SARS).

Compliance with membership and statutory obligations applicable to tax practitioners is critical. To protect your tax practitioner registration and maintain a clear disciplinary and/or criminal record, it is imperative to ensure that all conduct is undertaken within RCB and SARS requirements and is underpinned by adherence to standards of ethics and professionalism.

One of our primary goals is to assist our members with remaining compliant and avoiding prosecution and/or deregistration. Should a member have challenges with their respective compliance, there are remedial options and services available to provide the necessary support and assistance through the SAIT Tax Technical and Legal and Compliance Departments. Members are encouraged to reach out and engage with SAIT to remain compliant by logging a query on the '[Ethics and Professional Responsibility](#)' Helpline.

## Government & stakeholder newsletters

No government or stakeholder newsletter were published for the week of 2 – 8 May 2024.

## Other tax practitioner access and functionality publications and announcements

- **8 May 2024:** SARS [announced](#) that it would be performing planned upgrades to the eFiling platform on Saturday, 11 May 2024 at 20:00 until Sunday, 12 May 2024 at 00:30. During this time, the digital platform will not be available.
- **3 May 2024:** SARS published the Limpopo, North West, Free State & Northern Cape and KwaZulu-Natal [mobile tax](#) unit schedules for May 2024.



# PART B – LEGISLATION & POLICY

## LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

### Legislation

No new legislation, international agreements or policy matters were published in the week of 2 – 8 May 2024.

## LEGISLATIVE INTERPRETATION

### Legislative interpretation calls for comment

On 3 May 2024, SARS issued the following call for comment:

- [Draft Interpretation Note](#) - Income Tax Exemption: Water Services Provider

For more information on the calls for comment, click [here](#).

## Submission made to National Treasury

On 2 May 2024, the SAIT Tax Technical team submitted commentary to National Treasury regarding the current income tax treatment of battery storage systems.

Although National Treasury has gone to great pains to explain why certain storage assets will not fall within the ambit of section 12B of the Act, we have identified discrepancies in the classification of certain battery storage assets utilised under various other government departmental programmes and the resultant potential inconsistent treatment of tax.

One such department is the department of Mineral Resources and Energy (DMRE). The DMRE has established the Battery Energy Storage Independent Power Producer's Procurement Programme (BESIPP) under which the DMRE requires, by means of a request for proposal (RFP), bidders to submit proposals for the storage and supply of electricity by virtue of battery storage assets to specific Eskom Holdings SOC Ltd (Eskom) substations. In order to supply this electricity to Eskom, bidders are required to conclude Power Purchase Agreements (PPAs) with Eskom. When these PPA's are concluded, bidders are required to obtain an electricity-generating license from the National Electricity Regulator of South Africa (NERSA).

Although battery storage assets function by absorbing electricity and storing same to then use as an alternative electricity supply when required, these class of assets (under the BESIPP) are typically classified as electricity generating in nature.

The effect of excluding these assets is that taxpayers who engage in the erection of battery storage facilities for energy storage and transmission purposes (under the BESIPP) are precluded from utilising the allowance contained in section 12B of the Act due to the rudimentary classification that these assets are storage in nature. Although the battery storage asset does not generate electricity, these assets store and process electricity back to substations – a process that is classified by NERSA as that which generates electricity. We therefore submitted that the accelerated specific asset allowance which is contained in section 12B is best suited and should be extended to this class of assets within the BESIPP.

Members are encouraged to study the full submission [here](#).

## Reminder of submission regarding Corporate Tax matters made to National Treasury

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 made 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](#). Members are welcome to reach out to [ksesana@thesait.org.za](mailto:ksesana@thesait.org.za) to obtain the accompanying Annexures that are referred therein.

## Reminder of 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**

No new court cases were published in the week of 2 – 8 May 2024.

## Other SARS publications and announcements

No other SARS publications and announcements were made in the week of 2 – 8 May 2024.

## OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

### SARS publishes its 2024/25 Annual Performance Plan

On 8 May 2024, SARS released the 2024/2025 Annual Performance Plan (APP). The APP contains the following performance commitments from SARS:

1. To prioritise the most essential and beneficial strategic initiatives. The initiatives aim to use technology to help taxpayers and traders meet their tax obligations voluntarily, increase public trust and confidence in SARS, and to make SARS a lean, integrated, and data-driven organisation through the SARS Modernisation Programme.
2. Operationalise the aspiration that 'tax just happens' guided by the principles of 'Tax Administration 3.0' and 'the best service is no service'. The end-state we aim to reach is a seamless taxpayer and trader experience that is clear, simple, easy, and accessible.
3. The implementation of the revenue management philosophy that conceptualises revenue as made up of revenue from the economy (including tax-policy interventions) and an efficient compliance programme. SARS will continue to explore opportunities to enhance base effects from compliance interventions by executing its compliance programme.
4. Build people capability; strengthen the leadership bench; focus on achieving excellent operations management; implement our enhanced employee value proposition; and finalise organisational arrangements and focus on succession management.