

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 16 - 22 May 2024
(Issue 19 -2024)

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TOP STORIES

SARS changes the rule book on eFiling Security Details

In recent months, SARS saw an uptick in the number of fraud cases reported with a specific increase in the number of eFiling profile hijacking cases. As a natural response thereto, there have been multiple implementation by SARS to curb the risk of unauthorised access to eFiling profiles. Top of the list is ensuring the integrity of eFiling security details.

Through frequent engagement with members, SAIT identified a fundamental misunderstanding of the difference between eFiling security and the taxpayer contact details.

With the recent [announcement](#) by SARS to restrict taxpayers from registering for SARS eFiling if they already have the maximum number of eFiling profiles linked to their security contact details, it has become imperative for practitioners to understand the difference between the between eFiling security and the taxpayer contact details.

These differences are discussed in further details, [here](#).

Looming deadline for employer reconciliations and third-party data reporting

Employers and other third-party data providers are reminded of the deadline of 31 May 2024 for the submission of 2024/02 annual employer EMP501 reconciliations and third-party data. This data is used by SARS to pre-populate taxpayers' income tax returns.

For the first time in history, tax exempt institutions (PBO) are required to submit third-party data on the donations received during the 2024 year of assessment (1 March 2023 – 29 February 2024). Unfortunately, because these are unchartered territories, many tax practitioners may not know how to submit the third-party data as required by SARS. SAIT has, therefore, drafted two tax advisories to assist with the process of submitting third-party data for PBOs. Access the advisories below:

[Part One: eFiling submission](#)
[Part Two: HTTPS submission](#)

SARS is urging employers and third parties to stick to the deadline of 31 May 2024 to avoid penalties, interest and/or criminal charges.

[#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 – 1 500 words

MEMBERS' DIGEST

The significance of *Motloung v CSARS*: Implications on SARS' authority and approach in tax evasion cases

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Tax evasion is an unfortunate reality that saps the strength of the public coffers, robbing a nation of much-needed revenue for public services and societal development. The case of *Motloung v Commissioner for the South African Revenue Service (CSARS)* is a pivotal legal decision penetrating the essence of tax law, dissecting the complex relationship between administrative penalties for tax evasion and the prospect of criminal prosecution for the same act.

In this article, I meticulously explore the ramifications of the momentous *Motloung* case on SARS interpretation of their remit, mainly when an initial mistake in judgment occurs and the consequences of a double jeopardy plea. This case sheds light on the importance of clarity and consistency in tax law enforcement and the need for a balance between administrative penalties and criminal prosecution to ensure compliance. Understanding the implications of the *Motloung* decision is crucial for taxpayers and tax authorities in navigating the complexities of the consequences of tax evasion.

The heart of the case lies in the doctrine of double jeopardy, derived from common law principles and entwined with constitutional rights, which asserts that no person shall be tried twice for the same offence. In contradiction to this principle, the *Motloung v CSARS* case affirms that SARS has the power to impose an administrative levy for intentional tax evasion and instigate subsequent criminal proceedings against the taxpayer. This verdict represents a straightforward interface of tax and criminal procedural law, shedding light on SARS' multifaceted authority. The case sets a precedent for the coexistence of civil and criminal consequences for tax evasion, demonstrating the complexity of legal implications in such cases. It also highlights the importance of understanding the interplay between tax laws and constitutional rights to ensure fair treatment of taxpayers.

The jurisprudential implications of the case are profound and multifarious. For SARS, a body vested with the formidable task of collecting revenue, the decision affirms the dual pathways available to sanction tax evasion: administration and prosecution. This dualistic approach allows SARS to exercise its administrative powers promptly, ensuring that tax compliance is enforced and that the consequences for evasion materialise swiftly. This is instrumental in deterring potential offenders by demonstrating that transgressions will not be tolerated and will indeed carry financial penalties. Furthermore, the court's ruling underscores the importance of upholding the rule of law in matters of taxation, sending a clear message that compliance is non-negotiable. By maintaining a strong stance against tax evasion, SARS can effectively protect the tax system's integrity and promote fairness among taxpayers.

However, the case also brings to sharp relief the concept of corrective justice, as it allows SARS to pursue criminal charges even after imposing an initial financial penalty. This possibility has significant deterrent effects, magnifying the risks associated with tax evasion. However, it also raises questions about the fair treatment of taxpayers once an administrative mistake, such as an erroneously

levied penalty due to SARS' mistaken judgment, has been made. The prospect of undergoing criminal proceedings despite the rectification of an administrative error exposes taxpayers to an uncertain and seemingly disproportionate legal landscape. This can create a sense of unfairness and insecurity among taxpayers, potentially eroding trust in the tax system. Tax authorities must balance enforcing compliance and ensuring procedural fairness to maintain public confidence in the tax regime.

On the one hand, this dual approach ensures stringent enforcement of tax laws, undoubtedly fortifying tax morale and compliance while concurrently bolstering public trust in the equitable application of such laws. Conversely, it poses the risk of perceived punitive excess, where taxpayers might feel as though they are subject to an overzealous application of justice, potentially damaging the fine balance of trust between the tax authority and the citizenry.

The case's implications extend beyond the immediate consequence of double punishment, as it prompts scrutiny of SARS' administrative processes. The danger of a mistaken judgment by SARS lies not solely in the harm to the taxpayer but also in the risk of undermining the credibility and reliability of the taxing authority. If SARS is to impose fines and bring cases without consequence, it must demonstrate an equally steadfast commitment to accuracy and due process. An erroneous administrative action, albeit potentially corrected, may inflict lasting damage on the taxpayer, who might have already suffered reputational and financial hardships.

Moreover, such mistakes call into question the calibre of oversight within SARS and the measures to prevent such errors. Taxpayers subjected to an improper levy may very well view further criminal proceedings as a profound injustice that could discourage voluntary compliance due to the perception that the system is fallible or inherently unfair. It is imperative for SARS to not only rectify errors promptly but also to implement safeguards

to minimise the occurrence of such mistakes in the future. Ensuring transparency and accountability in the tax collection is essential for maintaining public trust and encouraging compliance.

The Motlounge case, thus, serves as a stark reminder of the delicate balance that must be maintained between the vigorous pursuit of tax defaulters and the principled application of justice. It exemplifies the need for SARS to operate with the utmost precision and vigilance in executing their duties. Every instance where SARS must correct is an opportunity to reinforce its commitment to fairness by ensuring that amends are comprehensive and considering the implications for the affected taxpayer. This not only upholds the integrity of the tax system but also demonstrates accountability and transparency on the part of SARS. By handling cases like Motlounge with care and diligence, SARS can continue to build public trust and credibility in its enforcement actions.

Simultaneously, the case has another subtler impact: it reinforces the essential narrative that the elimination of tax evasion is an endeavour that benefits society as a whole. While SARS must persevere to clamp down on evasion, it must do so by upholding the principles of justice and proportionality. This approach will deter potential tax evaders and ensure that those who attempt to evade taxes are held accountable in a fair and just manner. By striking this balance, SARS can effectively fulfil its mandate while maintaining the trust and support of the public.

In essence, the Motlounge v CSARS case underpins a narrative that SARS is not omnipotent in its reach and is bound by the dictates of lawful administration. It encapsulates the inherent tension within the tax enforcement paradigm, which seeks to mitigate evasion through stringent measures while adhering to the principles of a fair and just legal process. The case serves as a reminder that SARS must operate within the confines of the law and respect taxpayers' rights, even in cases of suspected tax evasion. It highlights the importance of balancing

enforcement and accountability to maintain public trust in the tax system.

A corollary to this judgment is that taxpayers are now aware of the heightened severity the law can impose for intentional evasion, galvanising them to maintain scrupulous compliance. However, this newfound cognisance must be matched by an understanding that despite its expanded avenues of recourse, SARS is not invulnerable to critique or error and must continuously justify its actions within the ambit of rational and lawful governance.

In conclusion, the *Motloung v CSARS* case cements an important legal precedent that solidifies the power granted to SARS to enforce tax compliance through administrative and criminal channels. The decision serves as a warning beacon to all taxpayers about the gravity of tax evasion and its repercussions. Concurrently, it imposes upon SARS a weighty responsibility to execute its role diligently and fairly, ensuring that while it wields its considerable power, it must also safeguard against miscarriages of justice. The case is a linchpin in the ongoing narrative concerning the balance of power between taxation authorities and the rights of the citizenry. This narrative must continuously evolve to reflect a society that values fiscal responsibility and fundamental justice. This landmark ruling underscores the importance of transparency and accountability in tax administration, setting a precedent for future cases. It highlights the need for a delicate balance between enforcing tax laws and protecting taxpayers' rights, ultimately shaping how tax disputes are handled in the future.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Tax practitioners continue to experience challenges with the SARS Contact Centre

Over the past week, SAIT received numerous queries and reports from members regarding the challenges experienced when attempting to contact the SARS contact centre.

Tax practitioners are always required to utilise a specific queue when contacting SARS, and this is achieved by selecting '1' when prompted to do so. Once this selection is made, the tax practitioners PR-Number and ID number must be provided to authenticate the tax practitioner. Up until 3 weeks ago, this process was working seamlessly. Unfortunately, although tax practitioners provide the authentication details, SARS' systems seem to fail to authenticate the tax practitioner and routes the call to the ordinary taxpayer queue.

Once a tax practitioner has connected with SARS, the consultants are unable to assist as they do not have the functionality to assist tax practitioners, resulting in tax practitioners needing to redial and rejoin the call queue.

Additionally, for the convenience of tax practitioners, practitioners are usually advised to make use of the SARS Contact Centre call-back functionality for the SARS agents to call them back as soon as they are first in the queue. Unfortunately, after testing this function this week, once the call back is requested, the following error is experienced, *"the call back function is not available. Please hold for the next available agent"*.

Coupled with the high call volumes and extremely long waiting times, holding the line for the next available agent is often not practical or economical for tax practitioners.

Several of the cases, together with the accompanying case numbers, have been shared with SARS for investigation. Unfortunately, no feedback has been received thus far.

SAIT will continue to engage with SARS on all the abovementioned challenges until a resolution is received. Once additional feedback is available, same will be shared with members.

SARS changes the rule book on eFiling Security Details

In recent months, SARS saw an uptick in the number of fraud cases reported, with a specific increase in the number of eFiling profile hijacking cases. As a natural response thereto, there have been multiple implementations by SARS to curb the risk of unauthorised access to eFiling profiles. Top of the list is ensuring the integrity of eFiling security details.

Through frequent engagement with members, SAIT identified a fundamental misunderstanding on the difference between eFiling security and the taxpayer contact details.

With the recent [enhancement](#) by SARS to restrict taxpayers from registering for SARS eFiling if they already have the maximum number of eFiling profiles linked to their security contact details, it has become imperative for practitioners to understand the difference between the eFiling security and the taxpayer contact details.

eFiling security details

The eFiling security details are primarily used with retrieving the eFiling profile where the eFiling user has forgotten the username or password. To update the eFiling security details, the following process must be followed:

1. Select **My Profile** from the eFiling menu on the left and click on **Profile and Preference Setup**.
2. Scroll to the section **Security Contact Details**.
3. Insert your new email address and/or your new cell number.
4. Select your preferred method of communication.
5. Click on **Update & Save**.
6. On the pop-up screen that displays, select your preferred method of communication to receive the One-Time-Pin (OTP).
7. After you have entered the correct OTP, a message will display confirming that your security contact details have been updated successfully.

The latest [enhancements](#) by SARS essential limits the number of profiles which can have the same contact details as eFiling security details. The argument from SARS is that each profile, belonging to a separate individual, should have unique eFiling security details.

If these details have been linked to the maximum number of profiles, the eFiling profile will be locked and the taxpayer will be automatically directed to visit a branch office.

Taxpayer contact details

The taxpayer contact details are used by SARS as the primary contact details when contacting the taxpayer. These contact details are also used when an OPT is sent by SARS for a taxpayer to authorise a tax type transfer. To update the contact details, the following process must be followed:

1. Select **Home** from the eFiling menu at the top and click on **SARS registered details**.
2. Select **Maintain SARS registered details**.
3. Select **I agree** to continue and the RAV01 form will open.
4. Select and scroll down to **contact details**.
5. Update the contact details accordingly and press **submit** at the top left corner of the RAV01 form.
6. A message will display confirming that your security contact details have been updated successfully.

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. Tax practitioner calls being routed to the taxpayer queue at the SARS Contact Centre;
2. Delay in the finalisation of tax type deregistration; and
3. 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

Feedback from the recently held eMalahleni stakeholder regional meeting held on Monday, 20 May 2024 can be accessed [here](#).

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Gauteng North for 23 May 2024;
2. Mpumalanga for 24 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.

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 (updated). -The Business Rescue email address was changed to businessrescue@sars.gov.za on 1 May 2024. Any notices relating to business rescue sent after 30 April 2024 to the old email address (sarsdebtmanagement2@sars.gov.za) will not be acknowledged or accepted.

Key Operational News

Reminder that SARS hosted the much-anticipated third-party data training session

SARS will host a [training session](#) on the Third-Party Data submission. The Session will cover a variety of topics, including, HTTP or Connect: Direct submission platforms and the submission of the data file.

The webinar details are as follows:

- **Date:** 23 May 2024
- **Time:** 10:00 – 12:00
- **Platform:** Microsoft Teams (please note that Microsoft Teams has a maximum capacity of 1 000 participants. Therefore, this session will be on first come first served basis.)

Pre-reading material can be accessed, [here](#).

Other SARS and related operational publications and announcements

No other SARS operational news were published for the period of 16 – 22 May 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 16 - 22 May 2024.

Key tax practitioner news

No key tax practitioner news were released during the week of 16 - 22 May 2024.

Government & stakeholder newsletters

SARS publishes the latest Tax Practitioner and Government Connect newsletters

On 20 May 2024, SARS published issue 52 and issue 18 of the [Tax Practitioner](#) and [Government Connect](#) newsletters respectively. The latest editions of the newsletters highlights the following issues:

- Employer Annual Reconciliation period
- Business Rescue Email Address

- Dispute Resolution Enhancements for Trusts
- Reporting Digital Fraud
- Enhancements to Curb eFiling Registration Fraud
- Customs: Registration, Licensing, and Accreditation
- Mandatory Disclosure Rules

Other tax practitioner access and functionality publications and announcements

- **22 May 2024:** SARS [published](#) the Western Cape Mobile Tax unit schedule for June 2024.
- **16 May 2024:** SARS announced that the Bellville branch would be closed from 16 May 2024 until further notice. More detail will be made available as soon as possible. Virtual appointments will be honoured but no physical visits or walk-ins. SARS will communicate alternative service points as soon as possible.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Legislation

No new legislation, international agreements or policy matters were published in the week of 16 –22 May 2024.

Reminder regarding the legislative cycle update

The annual legislative tax amendment cycle which culminates in the promulgation of the Tax Laws Amendment Act and the Tax Administration Laws Amendment Act includes several key events.

During the Finance Minister's presentation of the National Budget Speech, the Minister indicated that National Treasury will be implementing a global minimum tax to limit the negative effects of tax competition. With retrospective effect for years of assessment commencing on or after 1 January 2024, multinational corporations with annual revenue exceeding €750 million will be subject to an effective tax rate of at least 15 per cent, regardless of where their profits are generated.

National Treasury forecasts that the implementation of the global minimum tax will raise an additional R8 billion in corporate tax revenue in 2026/27. Simultaneously, the Minister of Finance released the draft Global Minimum Tax Bill (and associated documentation) for public commentary. All submissions have since been made to National Treasury and are undergoing consideration.

At present, it is expected that the comprehensive annual tax amendments in the form of the draft tax amendment bills (together with the revised draft Global Minimum Tax Bill) will be published towards the end of July 2024. For ease of reference, SAIT has provided a calendar setting out the general dates relevant to the annual [legislative tax amendment cycle](#).

LEGISLATIVE INTERPRETATION

Legislative interpretation calls for comment

SARS has 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](#).

Legislative counsel publications

Issue of a Single Section 18A Receipt to a Donor Taxpayer for Multiple Bona Fide Donations

On 16 May 2024, SARS issued [BGR 70](#) that provides clarity on whether a section 18A-approved organisation is entitled to issue a single section 18A receipt for multiple *bona fide* donations actually paid or transferred by the same donor taxpayer during a year of assessment.

The Ruling contained in [BGR 70](#) stipulates that the sum of the multiple bona fide donations reflected in separate section 18A receipts must be the same amount as the sum of *bona fide* donations reflected in a single section 18A receipt.

The single section 18A receipt issued by a section 18A-approved organisation to a donor taxpayer, however, must contain the mandatory information and a breakdown listing the following information of each bona fide donation making up the sum of the multiple *bona fide* donations actually paid or transferred by that donor taxpayer during the year of assessment:

- The date of receipt of each bona fide donation;
- The amount of each bona fide donation if the donation was made in cash; and
- The nature and value of each bona fide donation if the donation is a non-cash donation.

Members are encouraged to study the full detail relating to [BGR 70](#) for further information regarding the background giving rise hereto.

Section 18A receipt: Donation of property in kind

On 16 May 2024, SARS issued [BGR 71](#) that provides clarity on the detail that must appear on a section 18A receipt issued by a section 18A-approved organisation to a donor taxpayer for a donation of any property in kind to comply with section 18A(2), and third-party reporting requirements under the Tax Administration Act, No. 28 of 2011.

To administer a tax Act, the Commissioner of SARS may obtain full information relating to anything that may affect the liability of a person for tax for any tax period, tax event, or the obligation of a person, whether personally or on behalf of another person, to comply with a tax Act. To this end, the Commissioner of SARS may by way of public notice, require a person that employs, pays amounts to, receives amounts on behalf of, or otherwise transacts with another person, or has control over assets of another person, to submit a third-party return in the prescribed form and manner and by the date specified in the notice.

Having regard to the provisions of section 18A(1), (2), (3), and (3A) of the Income Tax Act, and the purpose of third-party reporting requirement under the TAA, the information relating to a donation of property in kind that must, in addition to the other mandatory information, be contained on a section 18A receipt is the:

- nature of the donation, which is an adequate and accurate description of the donation of property in kind; and
- amount deemed to be an amount of the deduction of the donation of property in kind determined under section 18A(3) or (3A).

Members are encouraged to study the detail of the [BGR 71](#) for full discussion relating hereto.

Particulars to be contained in a Credit Note for a Valid Deduction under Section 16(3)(a)(v) for Prepaid Vouchers

On 21 May 2024, SARS released [BGR 72](#) that specifies the particulars that are acceptable in a credit note that the telecommunications company is required to issue to the prepaid subscriber in the circumstances contemplated in section 21(1)(f) for the purposes of sections 16(2)(a) and 16(3)(a)(v) of the VAT Act.

In previous times, prepaid subscribers to mobile telecommunication services utilised prepaid vouchers for the sole purpose of purchasing calls and short message services that are offered by that mobile telecommunications company. Changes in technological advances in the telecommunications industry have made it possible for subscribers to

utilise the prescribed services purchased from the telecommunications company to further acquire other services from third-party service-providers. For example, subscribers can now utilise prepaid vouchers to purchase financial services (long-term and short-term insurance), download music or movies, and purchase mobile money services supplied by other third-party service providers.

In this case, the telecommunications company cannot issue a credit note because it was not the supplier that provided the tax invoice to the subscriber for the additional services - as these vouchers are sold to subscribers by various other intermediaries. As a result, section 21(1) was amended with effect from 1 April 2024 to provide for instances whereby prepaid vouchers that have been issued by any registered vendor that is an “electronic communications service licensee”, for one purpose are then subsequently fundamentally varied or altered.

The particulars to be contained in a credit note as acceptable documentary evidence are as follows:

- The words ‘credit note’;
- The name, address and VAT registration number of the vendor;
- The name, address and, if the recipient is a registered vendor, the VAT registration number of the recipient, except if the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;
- The date on which the credit note was issued;
- Either of the below:
 - The amount by which the value of the said supply shown on the prepaid subscriber’s account has been reduced and the amount of the excess tax; or
 - if the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of the excess tax or a statement that the reduction includes an amount of tax and the rate of the tax included.
- A brief explanation of the circumstances giving rise to the issuing of the credit note; and
- Information sufficient to identify the transaction to which the credit note refers

[BGR 72](#) will apply from 1 April 2024 until it is withdrawn, amended or the relevant legislation is amended.

Members are encouraged to study [BGR 72](#) for full and further detail.

Published court cases

No new court cases were published in the week of 16 - 22 May 2024.

Other SARS publications and announcements

No other SARS publications and announcements were made in the week of 16 – 22 May 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

No other matters of interest for a tax practice were published for the week of 16 – 22 May 2024.