

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 18 - 24 Jan 2024
(Issue 2-2024)

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TOP STORY

Finance Minister wants your tips as preparations for the 2024 Budget Speech are underway

It is anticipated that the Minister of Finance, Mr Enoch Godongwana, will deliver the 2024 Budget Speech on Wednesday, 21 February 2024.

In anticipation of the Budget Speech, Minister Godongwana has extended an [invitation](#) to all stakeholders to submit suggestions and tips to consider in drafting the 2024 Budget. The submissions could be made under seven categories, including:

- Municipal finances;
- Spending priorities of government;
- Addressing a large budget deficit;
- Stabilising state-owned entity finances;
- Managing the energy crisis;
- Tax revenues; and
- Debt sustainability.

Members wishing to make submission to the Minister of Finance may do so by Sunday, 11 February 2024, [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.

Approximately 500 – 600 words

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Extensive delays experienced in payment of VAT refunds to vendors

Over the December 2023 and January 2024 period, SAIT has noted an increase in escalations relating to the delayed finalisation of VAT verifications and the late or non-payment of VAT refunds. In some instances, VAT verifications for periods dating back to January 2023 had not been finalised, thus directly affecting the payment of any possible refund. In other instances, the refund of one period has been withheld due to an ongoing verification or audit on another VAT period.

Retrospectively, considering the 2022 and 2023 escalations, SAIT noted a similar trend in the delay of finalising VAT verification and refund during December and January.

At present, all the individual cases submitted to SAIT via the TaxHelpline have been escalated to the responsible regions. However, considering the negative and potentially detrimental impact the delayed refunds have on small and micro businesses, SAIT will be preparing a submission to SARS in an effort to address this issue as a matter of urgency.

The submission will be made available in the coming weeks and feedback will be provided as soon as possible.

Appointment system STILL automatically routing to physical appointments

Since November 2023, several tax practitioners raised complaints about the unavailability of virtual appointments on the SARS online booking system (both telephonic and video appointments).

In response to these complaints, SAIT escalated the issue to SARS and also requested that additional capacity be made available on the virtual appointment channels, specifically within the Tax Practitioner Unit.

SARS confirmed that all appointments were being routed for physical appointments as a result of a system error that they are aware of and in the process of resolving. It was anticipated that a system fix would be implemented in December 2023, during the annual closure period.

Unfortunately, as on 24 January 2024, the virtual appointments were still not available to company representatives and tax practitioners. The virtual appointments continued to be available for individual taxpayers.

This issue was further escalated to the SARS Head Office, which suggested that the problem exists due to an authentication issue between the taxpayer profile and information provided by the appointment requestor (representative or tax practitioner).

Upon further analysis of the response provided by SARS, it was determined that it is improbable that all registered representatives and tax practitioners who experience the same or similar authentication error. It is further unreasonable to request all company

representatives and tax practitioners to visit their nearest SARS branch to update their SARS profiles in order to make virtual appointments in the future.

Following these developments, SAIT has continued to engage with SARS and has sent multiple additional examples to this effect to get SARS to fix the eBooking system.

The issue of additional appointments capacity was also addressed and SARS has indicated that additional capacity had been made available and appointment slots are available to both individual taxpayers and tax practitioners.

We will provide further feedback to members on the system fixed as soon as possible.

SAIT TaxHelpline officially opened for 2024 (reminder)

We are pleased to announce that the SAIT [TaxHelpline](#) is officially opened for 2024 and our expert consultants are ready to assist with a variety of topics including:

- Legislative interpretation;
- SARS Operations and eFiling;
- Customs;
- Accounting;
- Discretionary incentives and grants;
- Exchange control; and
- Ethics and professional conduct.

The designated [SARS escalations portal](#) is also available to assist in facilitating the escalation of cases outside the turnaround time to SARS.

Members who are struggling to log queries on the [TaxHelpline](#) following the reopening on Monday, 15 January 2024, kindly log out of the member portal, log back in and retry submitting.

NB: Please note that closing the browser tab does not log the portal out and you need to manually sign out and sign in using your password.

If the problem persists, please do let us know by sending your query details to helpline@thesait.org.za and we will allocate your a query number and assign the case to a consultant or SARS.

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 issuance of assessment following manual intervention on the return; and
2. Delay in the finalisation of VAT verifications and subsequent payment of refunds.

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

The following regional and national meetings have been scheduled:

1. Eastern Cape for 21 February 2024;
2. Mpumalanga for 29 February 2024; and
3. Western Cape for 6 March 2024

Other meetings of interest

1. RCB forum meeting scheduled for 5 March 2024;
2. RCB forum meeting scheduled for 4 June 2024;
3. RCB forum meeting scheduled for 10 September 2024; and
4. RCB forum meeting scheduled for 12 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: January 2024

Month	Tax Type	Date	Notification
January 2024	Employment Taxes	05/01/2024	EMP201 submissions and payments
	Income Tax	24/01/2024	Submission due date for 2023 income tax returns for individuals and trusts that are provisional taxpayers
	Value-Added Tax	25/01/2024	Manual VAT201 submissions and payments
	Value-Added Tax	31/01/2024	Electronic VAT201 submissions and payments

SAIT member resources

- [SAIT Important tax dates calendar](#) – contains important dates from December 2023 to July 2024 (updated).
- [SAIT SARS contact map](#) – links service requirements to SARS channels (unchanged).

Key Operational News

Implementation of estimated assessment on VAT (reminder)

On 11 December 2023, SARS announced that the estimated assessment functionality had been implemented on the Value-Added Tax (VAT) system. In the event that a vendor does not provide the relevant material requested by SARS during the VAT verification process, SARS may raise an estimated assessment in terms of section 95(1)(c) of the Tax Administration Act, No. 28 of 2011 (the TAA).

SARS has provided the following information regarding the VAT estimated assessment:

- The detailed reasons for the estimated assessment will be provided and can be viewed on the notice (VAT217) issued to the vendor.

- A Request for Correction will not be allowed if SARS has raised an estimated assessment for VAT in the same period.
- If the vendor does not agree with the estimated assessment, the required relevant material must be submitted within 40 business days from the date of the VAT217 notice that was issued.
- The vendor can submit the outstanding relevant material via eFiling, at a SARS branch or through the [SARS Online Query System](#) (SOQS).
- The vendor may Request for Extension if the relevant material cannot be submitted within 40 business days.
- If the Request for Extension is approved, the vendor will have up to the date of extension or five (5) years plus 40 business days to submit the relevant material.
- The vendor will be allowed to submit a Request for Suspension of Payment if the estimated assessment results in an amount payable for the period stipulated in the VAT217 notice issued.
- The vendor will not be allowed to submit a Notice of Objection (NOO) as an estimated assessment issued in terms of section 95(1)(c) is not subject to dispute.

For more information, members are encouraged to access the following external guides:

- [Guide to submit a Dispute via eFiling – External Guide](#)
- [Guide to completing the Value Added Tax VAT201 Declaration – External Guide](#)

Tax Directives Interface specification version 6.601 (reminder)

On 7 December 2023, SARS announced its plans to implement enhancements to the Tax Directives process as indicated in the [IBIR-006 Tax Directives Interface Specification Version 6.601](#). The trade testing dates are still to be confirmed and the software is scheduled to be implemented by end of March 2024.

It is important to note that the enhancements planned relating to IBR-006 Tax Directives Interface Specification Version 6.601 do not include any changes in relation to the Two Pot System. The changes in respect of the Two Pot System will be communicated in due time. The affected stakeholders are set to receive communication with regards to the exact dates for trade testing and the implementation date closer to the time.

The following steps need to be followed to submit test files:

1. Before testing can commence, you will need to email 10 taxpayer reference numbers to ncts@sars.gov.za to ensure that the numbers are active. In the email subject line, use "Tax reference numbers for Trade Testing". A maximum of 10 taxpayer reference numbers will be allowed.
2. You will be notified via the same email address to confirm when testing may commence.

For trade testing queries please email ncts@sars.gov.za.

Provisional individuals and trust deadline: 24 January 2024 (reminder)

The 2023 Filing Season deadline for individual and trust provisional taxpayers was Wednesday, 24 January 2024.

Provisional taxpayers were encouraged to submit their true and complete returns timeously to avoid late submission penalties. The last submission of the income tax return may be subjected to two separate types of penalties:

1. **Non-compliance penalty subject to a fixed amount penalty:** The administrative non-compliance penalty for the failure to submit a return comprises of fixed amount penalties based on a taxpayer's taxable income and can range from R250 up to R16 000 a month

for each month that the non-compliance continues. Administrative penalties recur each month that the taxpayer is non-compliant, up to a maximum of 35 months.

- 2. Once off late submission penalty:** A once-off administrative penalty may be imposed to any provisional and non-provisional taxpayers that were not auto assessed and submitted a return post filing season and pre-imposition of the recurring administrative penalty.

If the deadline was missed, we encourage all members to submit their tax returns without any further delays. Learn more about the late submission penalties [here](#).

Other SARS and related operational publications and announcements

No other SARS and related operational announcements were made for the period 18 – 24 January 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 18 – 24 January 2024.

Key tax practitioner news

SARS amends the criteria for registration of Tax Practitioners and the recognition of Controlling Bodies

On 22 January 2024, SARS announced that the criteria for registration of tax practitioners and the recognition of controlling bodies had been amended.

Chapter 18 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (the Act), amongst others, ensures the professionalism of the tax advisory industry. Instrumental in this process is the role of tax practitioners and RCBs. Barring some exceptions, Chapter 18 also requires every natural person who, for a fee, provides advice to another person with respect to the application of a tax Act or completes or assists in completing a return by another person, to register with an RCB and SARS as a tax practitioner.

SARS announced that the change had been made to:

- Requirements of individuals when registering as a Tax Practitioner.
- Requirements of Tax Practitioner Membership relating to their RCBs.
- Requirements of Controlling Bodies to be approved as RCBs.

For more information, access the full [tax practitioner guide](#).

Government & Stakeholder Newsletters

No new Government & Stakeholder Newsletters were published for the week 18 – 24 January 2024.

Other Tax practitioner access and functionality publications and announcements

- **18 January 2024:** SARS [published](#) the tax workshop schedule for the Western Cape province which will be available in February.
- **18 January 2024:** SARS [published](#) the mobile tax unit for the Western Cape province available for the remainder of January 2024.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy & international agreements

Budget Review 2024

It is anticipated that the Budget Review 2024 will be delivered on 21 February 2024. SAIT Tax Technical and the various Tax Technical Work Groups will study the proposals made in the Budget Review and where necessary, prepare comment.

SAIT will monitor the outcome of the Annexure C of the Budget Review 2024 to ascertain which proposals were in fact accepted by the Minister of Finance, and which were not.

In the interim, and in preparation for the upcoming Budget, members who would like to submit a budget tip to the Minister of Finance may do so [here](#).

Legislation

2023 Legislative cycle update (reminder)

On 22 December 2023, the Taxation Laws Amendment Act (TLAA), Tax Administration Laws Amendment Act (TALAA) and the Rates and Monetary Amounts and Amendment of Revenue Laws Act were promulgated and assented into law by the President.

More specifically, the following Amendment Acts were published in the *Government Gazette* as well as on SARS' websites:

- [Act No 18 of 2022](#) – Tax Administration Laws Amendment Act, 2022
- [Act No 19 of 2022](#) – Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2022
- [Act No 17 of 2022](#) – Taxation Laws Amendment Act, 2022

LEGISLATIVE INTERPRETATION

Legislative interpretation calls for comment

No new calls for comments were submitted for the week of 18 – 24 January 2024.

Legislative counsel publications

New Binding Private Rulings (Reminder)

1. Binding Private Ruling 403 – Taxation of covered persons in respect of equity linked notes

On 14 December 2023, SARS published [Binding Private Ruling 403 \(BPR 403\)](#) which determines the tax treatment of amounts causally connected to financial assets and financial liabilities of a 'covered person' which is subject to section 24JB(2).

Parties to the proposed transaction are the Applicant: a resident company and the Noteholder who are various resident companies.

The ruling made in connection with the proposed transaction is as follows:

- a) The provisions of section 24JB (2) will apply to the ELN.
- b) All amounts recognised in profit or loss in the Applicant's Statement of Comprehensive Income in respect of the ELN measured at fair value must be included in or deducted from the Applicant's income in terms of section 24JB (2).
- c) Section 24JB (3) will apply to the Subscription Amount and the Redemption Amount.
- d) The Subscription Amount will not be included in the 'gross income' of the Applicant in the year of assessment in which the ELN is issued.
- e) The Redemption Amount payable by the Applicant on the Redemption Date will not be deductible from the income of the Applicant in terms of section 11(a) read with section 23(g).

This binding private ruling is valid for a period of five years from 10 November 2023. Members may access [BPR 403](#) for full details.

2. Binding Private Ruling 402 – Transfer of long-term Insurance business to a local branch of foreign reinsurer

On 14 December 2023, SARS published [Binding Private Ruling 402 \(BPR 402\)](#) which determines the tax implications of the transfer of life reinsurance business from a resident reinsurer to a local branch of a foreign company.

The parties to the proposed transaction are: the Applicant who is a resident and licensed life reinsurer that is a wholly-owned subsidiary of Company A, Company A; who is a resident that is a wholly-owned subsidiary of Company B, Company B; a foreign reinsurance company that is the ultimate holding company of the group to which the Applicant and Company A belongs, the Branch which is a permanent establishment of Company B in South Africa and lastly, the Trust which is a resident trust established for insurance regulatory purposes as required by section 40 of the Insurance Act 18 of 2017.

The ruling made in connection with the proposed transaction is as follows:

"The Act

- a) *The difference in the market value of net insurance liabilities assumed by the Branch from the Applicant and the IFRS value of such net insurance liabilities must be allocated to the Untaxed Policyholder Fund and the Risk Policy Fund. Any surplus in those funds must then be transferred to the Corporate Fund and taxed in the Corporate Fund in accordance with section 29A (7).*
- b) *The cash payment received by the Branch from the Applicant as consideration for the assumption of insurance liabilities of the Applicant constitute a receipt of a capital nature and must not be included in the gross income of the Branch as defined in section 1(1).*
- c) *The Branch will constitute a short-term insurer conducting short-term insurance business as contemplated in section 28 and should be taxed in accordance with the provisions of section 28.*
- d) *The claims paid in respect of the short-term insurance policies issued and or assumed from the Applicant are deductible under section 11(a) read with section 28(2)(c).*
- e) *The Branch will be allowed a deduction for technical liabilities assumed in terms of section 28(3A) in respect of the Branch policies transferred and must include such amounts deducted in income in the following year of assessment under section 28(4).*
- f) *The amount in respect of liabilities to be deducted in terms of section 28(3A) must be determined in accordance with IFRS as prescribed in the formula in section 28(3A).*
- g) *The transfer of non-cash capital assets by the Branch to the Trust to ensure the required level of assets are held as security by the Trust for regulatory purposes will not be a disposal under paragraph 11(2)(a) for purposes of the Eighth Schedule.*
- h) *As the transfer of assets by the Branch to the Trust will not result in a disposal for*

purposes of the Eighth Schedule, any income and gains attributable to the assets held in the Trust will be attributed to the Branch and taxed accordingly.

The VAT Act

- a) *Paragraph (v) of the proviso to the definition of “enterprise” specifically excludes from the definition any activity to the extent that it involves the making of exempt supplies and as such, to the extent that any assets are applied exclusively for exempt purposes, those assets would not form part of the enterprise of a vendor*

As the enterprise or business is being sold and such enterprise consists of assets and liabilities, section 8(16) applies to the supply of the enterprise as a whole and does not apply to the individual assets. Notwithstanding the Agreement the assets exclusively used for exempt purposes will not form part of the enterprise for VAT purposes. The supply of the remainder of the business as a whole (which includes the mixed-use assets) will be deemed to be made wholly in the course or furtherance of the Applicant's business and VAT must be accounted for on the full selling price at the standard rate of 15%.

The Applicant can therefore claim an input tax deduction under section 16(3)(h) in respect of the mixed-use assets sold by the Applicant to the Branch, if the documentary requirements under Interpretation Note 92 are obtained.

- b) *The payment by the Applicant to the Branch for the Branch assuming the insurance liabilities of the Applicant, subsequent to reducing the insurance liabilities with the negative liabilities, will not be consideration in respect of a separate supply of services. Consequently, the Applicant and the Branch do not need to account for VAT.*
- c) *The Delegation Payment which relates to the Branch assuming other freestanding liabilities of the Applicant will be an exempt supply and as a result the Branch does not need to account for VAT on that portion of the Delegation Payment.*
- d) *The Branch will be required to register for VAT if it will have taxable supplies exceeding R1 million in a 12-month period in South Africa and Company B will not be required to register as a VAT vendor in South Africa.*
- e) *To the extent that the supply of the assets comprises financial services which are exempt supplies, the supply of those assets for regulatory purposes will be exempt from VAT and therefore the value of supply rules for connected parties will also not apply.”*

This binding private ruling is valid in respect of the year of assessment ending 31 December 2023. Members are encouraged to access the [BPR 402](#) for full details.

3. Binding Private Ruling 401- Leasehold improvement allowance

On 14 December 2023, SARS published the [Binding Private Ruling 401](#) (BPR 401) which determines the tax consequences for a lessor in respect of improvements effected by a lessee.

The parties to the proposed transaction are the Lessor, which is a resident company and the Lessee, which is a resident company, which is independent of the lessor.

The ruling made in connection with the proposed transaction is as follows:

- a) In respect of the Inclusion Amount, the Lessor may deduct from its income an allowance under section 11(h), equal to the difference between the Inclusion Amount and the present value of the Inclusion Amount, which present value is determined by discounting the Inclusion Amount at 6% over the number of years taken into account in the determination of the relevant allowance granted to the Lessee under the provisions of section 11(g).

This binding private ruling is valid for a period of three years, from 11 September 2023. Members can access the full [BPR 401](#) for more information.

4. Binding Private Ruling 400 – donations tax implications on issue of shares at nominal value to enhance BBBEE credentials

On 14 December 2023, the [Binding Private Ruling 400](#) (BPR 400) which determines whether donations tax will be payable on the amendment of a company’s memorandum of incorporation (MOI) to allow for the issue of shares at nominal value to a Corporate Social Investment (CSI) trust in order to enhance the BBBEE status of a group of companies.

The parties to the proposed transaction are the Applicant: a resident trust benefitting employees of a group and who currently holds all the issued share capital in Company A, Company A; a resident company who currently holds shares in the listed holding company of the group (Listco) and CSI Trust; a resident CSI trust.

The ruling made in connection with the proposed transaction is as follows:

- a) No donations tax liability arises under section 54 as a result of the proposed transaction comprising:
 - the amendment of Company A’s MOI.
 - the amendment of the Applicant’s trust deed to incorporate the provisions of the ESOP; and
 - the issue of shares by Company A to CSI Trust for a nominal consideration.

This binding private ruling is valid for a period of three years from 14 August 2023. Members can access the [BPR 400](#) for more information.

Court cases published (Reminder)

On 15 January 2024, SARS published the following Supreme Court of Appeal judgment:

Date of delivery	Case	Applicable legislation
09/01/2024	Unitrans Holdings Limited v CSARS (A3094/2022)	Income Tax Act, 1962
<p>Summary: Appeal from the Tax Court – whether interest expenditure is tax deductible, as having been incurred in the course of carrying out ‘any trade’ and in the production of income – section 24J(2) of the Income Tax Act – the taxpayer trading as an investment holding company – the interest expenditure claimed not closely linked to its income earning operations as an investment holding company – the purpose of the expenditure was not to produce income but to further the interest of the subsidiaries – therefore, the expenditure was not incurred in the production of the taxpayer’s income.</p> <p>Appeal dismissed with costs.</p>		

On 15 January 2024, SARS published the following High Court judgment:

Date of delivery	Case	Applicable legislation
18/12/2023	<i>Enviroserv Waste Management (Pty) Ltd v CSARS (154/2022)</i>	Income Tax Act, 1962 Tax Administration Act, 2011
Summary: Income tax law – section 12C(1)(a) of the Income Tax Act 58 of 1962 (the ITA) – whether cells built into landfills and used for treatment and storage of waste qualify as plant under the section – whether they qualify as buildings under section 13 of the ITA – decomposition and biodegradation of the waste in the cells is a process similar to manufacture – the appellant is entitled to claim depreciation allowance in respect of the cells.		
Income tax law – understatement penalty imposed for an incorrect statement made in income tax returns – reasonable care not taken in completing returns – Commissioner for the South African Revenue Service did not prove prejudice under section 102 read with sections 221 and 223 of the Tax Administration Act 28 of 2011.		

Other SARS publications and announcements

No other SARS and related legislative announcements were made for the period 18 – 24 January 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

No other matter of interest for a tax practice was published for the period 18 – 24 January 2024.