

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 23 - 29 May 2024
(Issue 20 -2024)

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TOP STORIES

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.

SAIT releases the May 2024 Member Compliance Report

One of the key requirements for registration as a Tax Practitioner (as required by the Tax Administration Act) is that members must attend to a prescribed amount of continuous professional development (CPD) per year. Failure to do so may result in a member's registration being revoked. Without registration, a person may not practice as a Tax Practitioner and doing so constitutes a criminal offence.

Technical skills and up-to-date knowledge lie at the core of being a tax professional. Clients and other persons engaging with tax professionals assume that tax professionals understand the technical and practical landscape while keeping up with the latest tax developments. Undertaking CPD assists the professional so that the professional:

- Can maintain knowledge and skills to provide services of the highest quality.
- Can remain up to date in terms of tax interpretation, legislation and policy direction.
- Can properly advise clients of their rights and obligations in terms of the tax system.

For more information on the May 2024 member compliance report, 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.

Approximately 500 – 1 500 words

MEMBERS' DIGEST

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

Written by: : **Kulani Dhumazi**,
Master Tax Practitioner (SA)TM; M.Inst.D



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

Reminder on tax practitioners experiencing 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.

Reminder on SARS' changes to 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. Delay in the finalisation of VAT objections;
2. SARS issuing final demands for outstanding returns, despite the returns being submitted already;
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

Feedback from the following RCB/SARS regional meetings held between the week of 23 – 29 May 2024 can be accessed:

1. [Gauteng North](#) held on 23 May 2024;
2. [Mpumalanga](#) held 24 May 2024.

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. North West for 3 June 2024;
2. Western Cape for 5 June 2024;
3. Free State and Northern Cape for 10 June 2024;
4. KwaZulu-Natal for 10 June 2024;
5. Gauteng South for 17 July 2024;
6. Gauteng North for 22 August 2024;
7. Free State and Northern Cape for 9 September 2024;
8. KwaZulu-Natal for 9 September 2024;
9. Free State and Northern Cape for 11 November 2024;
10. Gauteng South for 13 November 2024;
11. Gauteng North for 21 November 2024; and
12. KwaZulu-Natal for 25 November 2024.

Other meetings of interest

1. Dispute work group meeting scheduled for 30 May 2024;
2. RCB forum meeting scheduled for 4 June 2024;
3. SARS National Operations meeting scheduled for 25 July 2024;
4. RCB forum meeting scheduled for 10 September 2024;
5. RCB forum meeting scheduled for 12 November 2024; and
6. 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 |
| June 2024 | 07/06/2024 | Employment Taxes | EMP201 - Submissions and payments |
| | 25/06/2024 | Value-Added Tax | VAT201 - Manual submissions and payments |
| | 28/06/2024 | Value-Added Tax | VAT201 - Electronic submissions and payments |
| | 28/06/2024 | Income Tax | ITR14 - Submission of 2023 returns for companies with a June year-end |
| | 28/06/2024 | Income Tax | 1st provisional (2024) - Submissions and payments for individuals, trusts and companies with a December year-end |
| | 28/06/2024 | Income Tax | 2nd provisional (2024) - Submissions and payments for companies with a June year-end |
| | 28/06/2024 | Income Tax | 3rd provisional (2023) - Payments for companies with a December year-end |

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

Update to the SARS Online Query System

On 24 May 2024, SARS announced that the [SARS Online Query System \(SOQS\)](#) has been updated to include requests for Penalty Statement of Account and Report SARS Employee Corruption.

The [SOQS guide](#) was also updated and can be read for more information.

Other SARS and related operational publications and announcements

No other SARS operational news were published for the period of 23 - 29 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 23 - 29 May 2024.

Key tax practitioner news

May 2024 member compliance disciplinary and compliance

One of the key requirements for registration as a Tax Practitioner (as required by the Tax Administration Act) is that members must attend to a prescribed amount of continuous professional development (CPD) per year. Failure to do so may result in a member's registration being revoked. Without registration, a person may not practice as a Tax Practitioner and doing so constitutes a criminal offence.

Technical skills and up-to-date knowledge lie at the core of being a tax professional. Clients and other persons engaging with tax professionals assume that tax professionals understand the technical and practical landscape while keeping up with the latest tax developments. Undertaking CPD assists the professional so that the professional:

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- Can remain up to date in terms of tax interpretation, legislation and policy direction.
- Can properly advise clients of their rights and obligations in terms of the tax system.

CPD Is a statutory requirement

Government recognises the importance of lifelong learning in terms of professional recognition. SAIT registration as a professional body requires continued approval from the South African Qualifications Authority (SAQA). This continued approval is based on the expectation that professional bodies will require annual CPD from their members. By operation and virtue of **section 240A(1) of the Tax Administration Act 28 of 2011**, the South African Revenue Services (SARS) additionally requires that registered tax practitioners satisfy a more prescriptive version of annual CPD. These statutory requirements are echoed in SAIT codes, policies as well as terms and conditions for continued membership and registration as a tax practitioner. Members are urged to familiarise themselves with the key requirements encapsulated under [SARS Criteria for the Registration of Tax Practitioners and the Recognition of Controlling Bodies](#), to the extent that this directive relates to CPD, members are encouraged to study section 4.4. It is crucial to maintain lifelong learning efforts in order to remain registered as a tax practitioner and remain in practice.

Key technical competencies

Our [CPD policy](#) is an instrument aimed at informing members of the applicable requirements. This, in turn, assists members in remaining compliant by undertaking continued education and development of which SAIT provides in excess of 50 hours annually.

Given the pace of change in the tax practice environment, members should ensure that their CPD activities enhance and further develop competency in taxation and key related technical areas and disciplines. These areas include taxation, accounting, law, and technology.

Ethical values for tax practitioners

Ethics means performing professional duties conscientiously with a principled commitment to the best interests of the client as well as the tax community. Good practice and professional cooperation preserve professional relationships and increases public trust. Members must accordingly comply with [SAIT's ethical codes of conduct](#) and commit some of their CPD efforts toward ensuring that they fully understand all ethical standards required. These standards often entail appropriate practice management.

Standard CPD requirements

In order to retain SAIT membership and SARS tax practitioner registration, members in practice or members holding full SAIT designations (exceptions made to Affiliate members) are required to complete a total of thirty (30) hours of CPD:

- 12 hours of non-verifiable CPD
- 18 hours of verifiable CPD

With primary focus on verifiable CPD, the relevant hours required are further broken down as follows:

- 10 hours of tax-related CPD (mandatory)
- 6 hours of profession-specific CPD (optional*)
- 2 hours of ethics and professional standards CPD (mandatory)

** This option provides more flexibility in allowing members to complete their CPD by engaging with learning material that is more pertinent to their day-to-day work outside of tax, this may include disciplines such as bookkeeping, accounting, auditing, or law. Please note that should a member elect to forego the option to complete 6 of the total 18 required hours of verifiable CPD, they will be required to complete same based on tax-specific learning.*

Setting aside the need for improved compliance with CPD as a general matter among SAIT members, there is a notable statistical disparity between webinar registrants, webinar attendees and entries reflecting quizzes completed for the relevant webinars attended. It is also noted that members do not fully engage with CPD materials, including webinar recordings, slides provided as well as quizzes available in order to obtain and log CPD points.

The table below will illustrate the discrepancy noted (statistics provided are extracted from 2024 SAIT-only webinar data):

| Number of Attendees/ Registrants | Number of Webinar Views | Number of CPD entries Logged |
|-------------------------------------|-------------------------|---------------------------------|
| 2 987 | 1 585 | 822 |

The statistics provided above give us insight into member behaviour around CPD. As above noted, a large number of members remain non-compliant with CPD which places the member at risk of suspension or deregistration as a failure to maintain statutory, SARS and SAIT obligations for the retention of tax practitioner registration. Members are urged to ensure that they engage fully with CPD material provided and ensure completion of applicable quizzes to claim CPD points reflecting their participation. SAIT issues weekly notices on upcoming CPD events which provide multiple opportunities and varied options for members to maintain their CPD compliance. Should members wish to catch-up on previous recorded webinars, they may access their Member Portal as seen on email communication from SAIT.



Access our member portal here



Catch up on previously recorded webinars

Should points not reflect on a member's profile and/or should a member experience technical or any other challenges with their respective compliance, the necessary support and assistance is available through the SAIT Legal and Compliance Department.

With the above in mind, members are urged to reach out and engage with SAIT for regular compliance checks and to remain compliant.

Government & stakeholder newsletters

SARS publishes the 8th edition of the SMME Connect newsletter

On 24 May 2024, SARS published the 8th edition of the [SMME Connect newsletter](#). The latest edition of the newsletter highlights the following topics:

- Accuracy and on-time filing is critical
- Channels to submit EMP501
- Penalties for non-compliance
- Employment Tax Incentive (ETI)
- Debt Management
- Tax Scams
- Useful Information

SARS publishes the 5th edition of the SMME Connect newsletter

On 24 May 2024, SARS published the 5th edition of the [Tax Exempt Institutions Connect newsletter](#). With the 31 May submission date for IT3(d) third-party data looming, SARS would like to thank the approved section 18A entities that have already successfully submitted or are in the process of submitting their third-party data.

To date, most entities have successfully submitted via the HTTPS channel, followed by submissions via eFiling. SARS is most encouraged by the uptake from smaller and medium sized entities.

In preparation for the 31 May 2024 deadline, SARS would like to bring the following resources to your attention to further assist with your submissions:

- [Public Notice 3082](#) on the section 18A enhanced reporting requirements;
- [Public Notice 3631](#) on the submission of IT3(d) third-party data submissions;
- The [TEI Segment IT3\(d\) FAQ webpage](#) – which will be updated twice a week with the key questions and queries submitted by our taxpayers;
- [IT3\(d\) enrolment micro-learning video](#) – which is available on the SARS TV YouTube channel;
- [Binding General Ruling 71](#)– Section 18A Receipt: Donation of Property in Kind; and
- [Binding General Ruling 70](#)– Issue of a Single Section 18A Receipt to a Donor Taxpayer for Multiple Bona Fide.

Reminder on SARS' 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

- **27 May 2024:** The SARS [Mthatha branch](#) was closed on 27 May 2024 due to unrest in the area.
- **23 May 2024:** SARS [published](#) the tax workshop schedules for June 2024 to be hosted in the North West province.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Legislation

No new legislation, international agreements or policy matters were published in the week of 23 –29 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

Release of Binding General Ruling 64 (Issue 2) that outlines the VAT treatment pertaining to temporary applications of new dwellings for exempt supplies simultaneously held by developers for taxable purposes

Property developers have in many instances struggled to comply with VAT legislation. This arose as a result of difficulties that are experienced by property developers to comply with VAT legislation in instances when these developers develop residential properties for sale in

difficult economic times. The difficulty arises in that there are high holding costs associated with the development, marketing and sale of properties. As a result, developers often let newly developed dwellings out as residential accommodation to cover some of the holding costs whilst the properties are marketed for sale.

Resultantly, on 21 May 2024, SARS released the updated version of [BGR 64](#) that clarifies the VAT treatment of newly built residential dwellings that have been developed and held for sale under a taxable supply by developers, but that are simultaneously temporarily applied to make exempt supplies of residential accommodation in a dwelling.

The ruling contained herein, addresses the VAT treatment as pertaining to the:

- Adjustment for dwellings temporarily applied for exempt supplies;
- Sale of dwellings whilst being temporarily applied for exempt supplies;
- Adjustment after expiry of the prescribed 12-month period or permanent application for exempt or other non-taxable purposes during that period;
- Claw-back deduction under section 16(3)(o); and
- Effective date and scope of application.

Members are encouraged to study content of [BGR 64](#) for detail relating to the above as well as the application of the provisions of section 18D.

Release of issue 4 of BGR 14 which has been expanded to address the VAT treatment of short term (non-life) insurance supplies

On 22 May 2024, SARS released an update to [BGR 14](#) due to the amendments to section 8(8) of the VAT Act and the introduction of section 8(8A) of the VAT Act, which came into effect from 1 January 2024. The amendments were necessary because of earlier amendments to the various section 72 rulings.

[BGR 14](#) sets out the VAT treatment of *inter alia*:

- The time of supply in relation to the supply of insurance and related intermediary services
- International transport insurance including stock throughput, goods in transit and marine insurance policies
- Hull and associated liability insurance
- Insurance cover provided in respect of fixed property and movable property located in an export country
- Excess and indemnity payments
- Third party payments
- Group accident claims

Members are encouraged to study the contents of [BGR 14](#) for comprehensive detail pertaining to the above line items.

Reminder regarding BGR 70 regarding the 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.

Reminder regarding the issue of BGR 71 regarding 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.

Reminder regarding 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 23 - 29 May 2024.

Other SARS publications and announcements

No other SARS publications and announcements were made in the week of 23 – 29 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 23 – 29 May 2024.