TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 04 - 10 July 2024
(Issue 26 -2024)

TABLE OF CONTENTS

TOP STORIES

Fraudsters still finding new ways to beat the tax system

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The decision comes two weeks before the commencement of the 2024 Filing Season, a period where branch appointments are difficult to secure with 2 - 6 week waiting times for virtual and physical appointments, respectively.

SARS, however, indicated that returns older than five years would only be blocked from the individual eFiling profile and that registered tax practitioners would still be able to submit these returns on the tax practitioner eFiling profile. However, upon testing the system, SAIT discovered that tax practitioners are also unable to file returns older than five years on eFiling.

For more information on this, read here.

FATF publishes latest status on SA's 'greylisting' action plan

The Financial Action Task Force (FATF) has published the latest update on South Africa's progress in addressing the action items in its prescribed Action Plan. Following the conclusion of the June 2024 FATF Plenary meetings, National Treasury has duly acknowledged that whilst South Africa is on track to address all the relevant 'action items', there are 14 outstanding items left to address. Although challenging, National Treasury anticipates that all 'action items' will be addressed by June 2025, thus affording South Africa an opportunity to exit the 'greylist'.

Moreover, National Treasury has confirmed that all relevant agencies and authorities continue to demonstrate significant improvements and remain committed to making the necessary improvements and progress.

Members are encouraged to access further detail, 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

Keeping all your coins safe in your piggy bank: safeguarding your assets with trusts

Written by: Roxshanna du Toit
General Tax Practitioner (SA)TM

'Trust' you are well

We use the word almost daily. It features in nearly every opening line of a professional email or introductory note: *"Trust you are well"*.

In this context specifically, it serves as a verb conveying hope that your reader is found to be in good health and in good spirits. It can also serve as the foundation for every good relationship we are fortunate enough to find in life; it is often well-rooted amongst the leadership of every established and long-standing business venture that has successfully stood the test of time.

The word 'trust' encompasses all these things. Beyond having a meaning so deeply impacting our lives, 'trust' can also materialise through a legal establishment, bringing to life an arrangement designed to safeguard your wealth and assets and preserve your legacy for generations to come.

Blimey, it's teatime, shall we have some tea: the history of trusts

The emergence of trusts in South Africa can be dated as far back as the 18th century. As the British established control over various regions of South Africa, they brought with them legal structures and institutions, including the concept of trusts derived from English common law.

Fast forward three centuries and trusts are still well utilised in our world today. They have proved their worth, evolving and adapting to changing economic landscapes and legal reforms and becoming increasingly utilised for various purposes, including estate planning, asset protection and charitable endeavours.

While the first trusts in South Africa found their origination from English common law, the Trust Property Control Act 57 of 1988 was promulgated on 17 June 1988, bringing into South African law the legal provisions that now apply to trusts, their establishment and management, as well as their administration by the trustees appointed for this specific purpose.

Who took the cookies from my cookie jar: using a trust to safeguard your assets

If you have ever heard of the saying "another day, another dollar", you would appreciate the meaning behind having worked hard to accumulate your assets and grow your wealth.

When one understands that most people work for the greater portion of their lives to grow their assets and leave a legacy to those held most dear to them, it is of paramount importance to protect the assets they have worked so hard to accumulate.

With this in mind, setting up a trust as an asset protection vehicle for safeguarding your assets from potential risks like claims from creditors, litigation or financial uncertainties may well be worth your while.

Setting up a trust for this purpose will involve transferring your assets into a trust and appointing a trustee who will be responsible for administering your trust and managing the assets housed therein for the benefit of nominated beneficiaries in accordance with the terms as outlined in the trust deed, which is drafted upon the creation of the trust.

The primary goal of an asset protection trust is to shield assets from being seized or depleted by creditors or legal judgements.

By placing your assets into a trust, you as the founder or person establishing the trust, relinquish direct ownership of your assets, thereby making it more difficult for creditors to access your assets in the event of a legal dispute or financial crisis. You can establish this type of trust for yourself, your family or your business in seeking to mitigate financial risks and safeguard your wealth for future generations.

Beyond providing an added layer of protection against financial risks and serving as an asset protection device, placing your assets in a trust offers several other potential benefits:

1. Estate planning: Housing assets in a trust can facilitate the efficient transfer of assets to beneficiaries, simplify your estate and save you on high executor fees based on the value of your estate.
2. Control and management: Trusts allow you as the founder to specify how assets are managed and distributed, even after your passing, ensuring assets are used according to your wishes.
3. Tax efficiency: With careful tax planning, trusts can offer tax advantages such as potentially reducing your estate duty. Your trust will be recognised as separate from you for tax purposes and all assets that are held in your trust will be excluded from your estate in calculating estate duty.
4. Creditor protection for beneficiaries: Assets held in trusts can also protect your beneficiaries from creditors or divorcing spouses, ensuring their long-term financial security.

Along with the benefits that can be reaped by housing your assets in a trust, it is equally important to remember that setting up a trust to hold onto your assets involves careful tax planning, ensuring that all regulatory checkboxes are being ticked by your trustees responsible for administering your trust.

This involves a very careful balance between protecting your assets and ensuring compliance with the legal and tax obligations that apply to trusts.

“You weren’t kidding!” (Not) An April Fool’s Joke: embracing the 1 April 2023 changes to the Trust Property Control Act

The first of April 2023, saw the dawn of a new compliance era for trusts with the Trust Property Control Act being amended to include ‘beneficial ownership’ regulations. This was no April fool’s joke and saw trusts facing new compliance requirements with both the Master of the High Court and SARS.

In understanding why the Trust Property Control Act was amended and why trusts are now heavily on the radar of both the Master and SARS, it is necessary to backtrack to October 2021, when the Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog, concluded their mutual valuation conducted on South Africa.

The report evaluated South Africa’s anti-money laundering (AML) and counter-terrorism financing (CTF) laws and found there were gaps in South Africa’s AML and CTF framework.

With trusts being flagged as high-risk vehicles that can potentially be used to facilitate money laundering and promote tax evasion, the Trust Property Control Act was amended following the FATF findings to include beneficial ownership regulations with effect 1 April 2023.

“Who is a beneficial owner of a trust?”, you may ask.

Taking guidance from the ‘beneficial owner’ definition contained in section 1 of the Trust Property Control Act, a beneficial owner is the natural person who directly or indirectly owns the trust property or assets or is any natural person who exercises effective control of a trust in the capacity of a trustee, founder or named beneficiary of the trust. These persons are seen to be the ‘warm bodies’ that ultimately control or exercise effective control over the trust and these are the warm bodies that SARS and the Master are interested in knowing more about.

The inclusion of the beneficial ownership regulations in the Trust Property Control Act has not only resulted in trusts needing to report the details of beneficial owners to the Master through the submission of a 'beneficial ownership register', but it has also triggered changes being implemented at SARS when it comes to trusts, namely:

1. At the onset of registration as a taxpayer with SARS, the trust needs to identify and report all beneficial owners of the trust;
2. The trust income tax return has been enhanced to include reporting on beneficial owners; and
3. IT3(t) third-party data reporting has come into effect, with 30 September 2024 marking the very first third-party data reporting deadline for trusts. This reporting is similar to IRP5 reporting for employers in declaring staff salaries and payroll taxes to SARS or medical aids in declaring to SARS the medical aid contributions made by their members. Trusts now fall under the third-party reporting umbrella, which requires declaring to SARS all income and capital gains vested or distributed to any person participating in the trust, including those identified as beneficial owners from the 2024 tax year onwards.

"All's well that ends well": leaving a legacy by protecting your assets in a trust

With this changed compliance landscape that trusts now face, it is your trustees who face additional compliance reporting to both the Master and SARS.

It is important for you to know what these responsibilities entail and what information your trustees need to report to SARS and the Master in relation to you, your trust and the trust beneficiaries.

You can choose to look at these changes as a more onerous form of trust administration being imposed on your trust or to consider these changes rather as an extended form of due diligence, giving you peace of mind that your trust is being properly administered and offering greater comfort and security that your trust assets are safe and protected.

Finding inspiration in Andy Warhol's philosophy, "The aim is not to live forever, but to create something that will", outside of paintbrushes and a magnificent palette, entrusting your assets to a trust could be the brushstroke of genius that shapes your life's ultimate masterpiece— your legacy.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

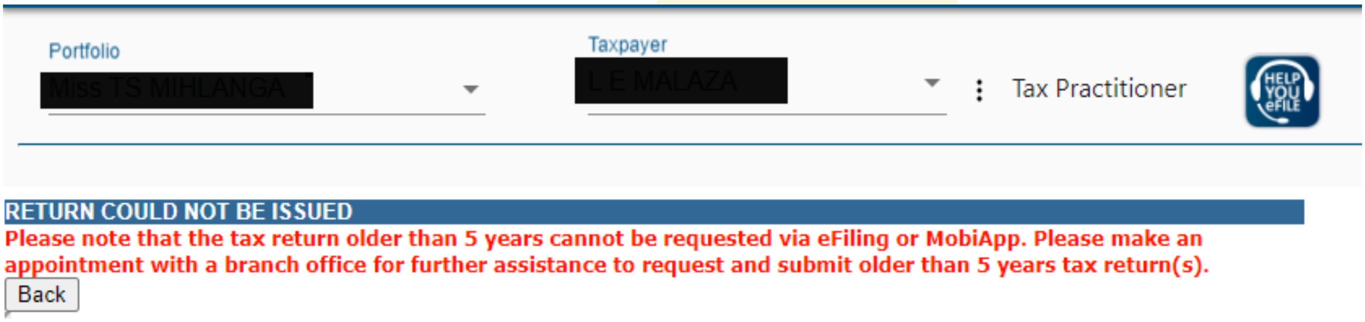
SAIT TaxHelpline – SARS operational queries

SARS blocks the submission of returns older than 5 years on eFiling

Two weeks ago, SARS took a decision to block the submission of personal income tax returns older than five years on eFiling and requires that taxpayers with outstanding returns must visit a SARS branch to regularise their income tax affairs.

The decision comes two weeks before the commencement of the 2024 Filing Season, a period where branch appointments are difficult to secure with 2 - 6 week waiting times for virtual and physical appointments, respectively.

SARS, however, indicated that returns older than five years would only be blocked from the individual eFiling profile and that registered tax practitioners would still be able to submit these returns on the tax practitioner eFiling profile. However, upon testing the system, SAIT discovered that tax practitioners are also unable to file returns older than five years on eFiling.



From SAIT's understanding, the rationale behind this decision is to manage the human resource capacity within the compliance audit division. With the unforeseen rise in fraud cases, the older tax returns are often used to submit fictitious deductions and rebates to create fraudulent refunds. As a result, the number of cases being routed for audit have increased, thus creating excessive backlogs within the audit divisions. With Filing Season starting in a few days, priority needs to be given to new audit cases *in lieu* of the older years of assessment.

While SAIT appreciates the above rational, we do believe that this decision goes against two of the nine SARS strategic objectives, namely:

- Make it **easy** for taxpayers and traders to comply with their obligations.
- Modernise our systems to provide **digital** and **streamlined** online services.

By forcing the taxpayers to visit the SARS branches in order to submit older returns, it makes it hard for taxpayers and tax practitioners to comply with the obligations, and moves away from utilising the digital online services already available.

SAIT is making a submission to SARS to request the reconsideration of this decision with the hopes of restoring the *status quo* for the submission of older tax returns.

Stoppers placed on assessed accounts after paying penalties on income tax

For income tax purposes, when a taxpayer settles their administrative penalty debt, the payment reference number is linked to the assessed account rather than the admin penalties account.

Unfortunately, when the payment is made to the assessed account, taxpayers receive weekly 'refund status' letters indicating that the refund cannot be paid out because of the admin penalty. There seems to be a delay in the manual allocation / debt equalisation processes. In most instances, the taxpayer must then submit a payment allocation on the SARS Online Query System for SARS to correctly allocate the payment.

In some cases, a stopper is placed on the assessed account because 'a payment was received when no payment was expected'. The taxpayer is then required to submit the proof of payment and an explanation on why the payment was made to SARS. If this is not done, it may delay the payment of any future refunds due to the taxpayer.

SAIT has previously tabled this issue for discussion at the SARS National Operations meeting held in April 2024. However, due to unfortunate time constraints, the issue could not be dealt with during the meeting. SAIT continues to engage SARS at the various regional engagements to get this issue looked at and resolved as soon as possible.

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:

- Lack of response provided on report digital fraud cases; and
- Delays in finalising income tax deregistration cases.

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).

Feeback from the RCB/SARS regional and national meetings

Feedback from the previously held Eastern Cape regional meeting can be accessed here.

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Gauteng South for 17 July 2024;
2. KwaZulu-Natal for 22 July 2024;
3. Eastern Cape tentatively scheduled for 14 August 2024;
4. Witbank, Mpumalanga tentatively scheduled for 16 August 2024;
5. Gauteng North for 22 August 2024;
6. Free State and Northern Cape for 9 September 2024;
7. KwaZulu-Natal for 9 September 2024;
8. Free State and Northern Cape for 11 November 2024;

9. Gauteng South for 13 November 2024;
10. Gauteng North for 21 November 2024; and
11. KwaZulu-Natal for 25 November 2024.

Other meetings of interest

1. SARS Trust engagement schedules for 18 July 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. 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: July 2024

Month	Date	Tax Type	Notification
July 2024	01/07/2024	Income Tax	**ITR12** – Issuance of **2024 Auto Assessment**
	15/07/2024	Income Tax	**ITR12** - Opening of **Filing Season 2024**
	05/07/2024	Employment Taxes	**EMP201** - Submissions and payments
	25/07/2027	Value-Added Tax	**VAT201** - Manual submissions and payments
	31/07/2024	Value-Added Tax	**VAT201** - Electronic submissions and payments

SAIT member resources

- SAIT Important tax dates calendar – contains important dates from January 2024 to January 2025 (unchanged).
- SAIT SARS contact map – links service requirements to SARS channels (updated) – The contact map has been updated to include the email addresses for Customs 'Transfer Pricing' submission escalations and complaints.

Key Operational News

Accepting or rejecting an auto-assessment this Filing Season

Filing Season 2024 is the 5th year of auto-assessment that SARS introduced during the 2020 year of assessment. The first two years of auto-assessments (2020 and 2021) allowed taxpayers to accept or reject the pre-populated tax return on eFiling. During Filing Season 2022, the 'accept' and 'reject' options were replaced by the Estimated Original Assessments, which saw taxpayers needing to submit a return with 40 business days if they did not agree with the assessment.

In 2023, the period to submit a revised assessment was automatically extended to 80 business days without the need to request for extension in terms of section 95(7) of the Tax Administration Act, No. 28 of 2011 (the TAA).

Much like Filing Season 2023, if the taxpayer disagrees with the auto-assessment, they must file their Income Tax Return (ITR12) with the additional information they have and submit it before 21 October 2024 via eFiling or SARS MobiApp.

Taxpayers who receive an auto-assessment do not have to wait for 15 July 2024, but can access the ITR12 immediately. If the taxpayer agrees with the auto-assessment, they do not have to do anything further.

Reminder on fraudsters finding new ways to beat the tax system

With Filing Season 2024 right around the corner and many other taxpayers having received their auto-assessments, fraudsters continue to lurk in the background looking for new ways to beat the tax system.

2024 has been a difficult year for many taxpayers and tax practitioners who, despite their best efforts to keep their profiles safe, were victim of tax scams and eFiling profile hijacking. Historically, the personal income tax filing seasons sees an increase in the number of tax scams and eFiling profile hijacking cases being identified and reported to SARS.

Over the past three weeks, SARS has alerted taxpayers to three separately identified scams doing the rounds

1. Outstanding tax payment - Where fraudsters proport to be SARS debt collectors and provide fake banking details to collect 'outstanding tax payments';
2. Tax refund – Where the fraudsters claim that a refund is due to the taxpayer and require the taxpayer to access a link for phishing purposes; and
3. Tax refund – A fake 'auto-assessment' notification stating that the tax calculations have been done and a refund is due to the taxpayer. To access the refund, the taxpayer must again access a link to phishing purposes.

It is important to taxpayers and tax practitioners alike to stay vigilant during this time. Members must take note that SARS does not have bank account numbers for taxpayers to make payments. All payment must be made via the public beneficiary accounts on all major banking App or by linking the bank account on the eFiling profile. Members should never open any links contained in emails or SMSs claiming to be from SARS.

If you believe you have been a victim of digital fraud or phishing scams, report these to SARS on the SARS Online Query System or by emailing phishing@sars.gov.za.

Other SARS and related operational publications and announcements

- **8 July 2024:** SARS launched a self-service WhatsApp channel that taxpayers can use to interact with SARS for tax advice and specific person income tax queries. Taxpayers can do the following via WhatsApp:
  - Request your Tax Reference Number;
  - Request your Statement of Account;
  - Request your Return Refund Status;
  - Request your Audit Status; and
  - Request your Notice of Assessment.

  The SARS WhatsApp number is 0800 11 7277

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 4 - 10 July 2024.

Key tax practitioner news

No government and stakeholder newsletters were published during the week of 4 - 10 July 2024.

Government & stakeholder newsletters

OTO publishes issue 33 of the Fair Play newsletter

On 4 July 2024, the Office of the Tax Ombud published issue 33 of the FairPlay newsletter. SAIT contributed to the 33rd edition of the newsletter, 'Tips for the youth', written by Yolisa Dyasi (Tax Technical Specialist: Operations and Tax Administration). The newsletter covers the following articles:

- A look into the ongoing hacking of SARS eFiling profiles;
- How to prevent and report digital fraud;
- Tips for the youth;
- Steps to take when appointing a tax practitioner; and
- Celebration of women in tax.

Other tax practitioner access and functionality publications and announcements

- **10 July 2024:** SARS scheduled maintenance to the digital platforms to take place on Wednesday, 10 July 2024 from 19:00 – 22:00. During this time, the system may have been unavailable.
- **9 July 2024:** SARS published the KwaZulu-Natal mobile tax unit schedule for July and August 2024.
- **9 July 2024:** SARS published the Eastern Cape mobile tax unit schedules for August to September 2024.
- **9 July 2024:** SARS conducted some scheduled maintenance to its digital platforms on Tuesday, 9 July 2024, from 19:00 – 22:00. During this time, the eFiling system may have been unavailable.
- **8 July 2024:** The SARS Belville branch relocated from the Corner of Teddington & De Lange Road to 14 Strand Road, Belville. From Tuesday, 9 July 2024, visitors visiting the physical SARS branch must visit the new location. Remember to book an appointment before visiting the branch.
- **5 July 2024:** The SARS Benoni branch permanently closed on 5 July 2024. All virtual appointments will, however, be honoured.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

No legislation, international agreements or policy matters were published in the week of 4 – 10 July 2024.

Reminder regarding the South African legislative cycle

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.

*A critical piece of legislation will be pertaining to the long-awaited release of the revised draft Global Minimum Tax Bill. Following the stakeholder engagement that was convened on 7 June 2024, SAIT envisages that revisions will be made to the draft Bill. Access more information pertaining to the Global Minimum Tax, here.

LEGISLATIVE INTERPRETATION

Submissions to SARS and current calls for comment

Submitted calls for comment

No submission on legislative calls for comment were submitted to National Treasury and/or SARS for the week of 4 – 10 July 2024.

Legislative interpretation calls for comment

On 5 July 2024, SARS issued the following call for comment:

- Draft Guide – Income Tax Benefits in Special Economic Zones

For more information on the calls for comment, click here.

Legislative counsel publications

SARS publishes a Tax Exemption Guide for Small Business Funding Entities

A major challenge in the growth of small, medium and micro enterprises (SMMEs) is access to funding due to their inherent risk and lack of collateral together with the fact that they often lack the necessary training and commercial skills to manage and develop the business. Often, SMMEs lack the necessary tax knowledge to conduct their business optimally.

Therefore, on 5 July 2024, SARS published the Tax Exemption Guide for Small Business Funding Entities to provide general guidance on the approval of small business funding entities under section 30C of the Income Tax Act 58 of 1962 (the Act) and partial taxation of its receipts and accruals under section 10(1)(cQ) of the Act.

To assist in the development of and to encourage support to SMMEs, the following legislative provisions, amongst others, were introduced specifically for SBFEs:

- Definitions in section 1(1) of the terms 'small business funding entity' and 'small, medium or micro-sized enterprise'.
- Section 30C setting out the prescribed requirements an entity must comply with to qualify for and retain approval as an SBFE to enjoy partial taxation.
- Section 10(1)(cQ) providing for the exemption from income tax of certain receipts and accruals of SBFEs and the taxation of receipts and accruals falling outside the permissible business undertakings or trading activities provided in that section.

The guide also outlines specific guidance in respects of the following taxes and duties that may affect entities approved by the Commissioner as SBFEs:

- Capital gains tax;
- Dividends tax;
- Donations tax;
- Employees' tax;
- Estate duty;
- Income tax;
- Securities transfer tax;
- Skills development levy;
- Transfer duty;
- Unemployment insurance fund contributions; and
- Value-added tax.

Tax practitioners who render services to this clientele are encouraged to study the guide for more detail.

SARS releases interpretation note 95(issue 3) that provides guidance on the section 12L deduction for energy efficiency saving

In response to South Africa being ranked as one of the top 20 global contributors of greenhouse gas emissions, government announced that it would implement measures to significantly reduce domestic greenhouse gas emissions. One such measure was the introduction of a carbon tax policy to encourage behavioural change towards cleaner low-carbon technologies.

As a complementary measure, government has introduced environmental-related tax incentives to address concerns related to global warming and energy security. One such incentive is contained in section 12L of the Act and essentially allows a qualifying taxpayer to claim a deduction for most forms of energy efficiency savings that result from activities performed in the carrying on of any trade and in the production of income. Claiming the section 12L deduction can create or increase an assessed loss, which taxpayers can utilise against their taxable income, thus creating a favourable tax position (in some instances). The Section 12L deduction became effective on 1 November 2013 and applies to years of assessment ending before 1 January 2026.

In releasing this interpretation note, SARS seeks to provide guidance on how to claim the deduction for energy efficiency savings under section 12L which is to be read together with the regulations that were published by the Minister of Finance pertaining thereto.

Members may access further detail, here regarding *inter alia* qualifying and non-qualifying activities for which the section 12L deduction may be claimed.

Published court cases

No new court cases were published in the week of 4 – 10 July 2024.

Other SARS publications and announcements

- **8 July 2024:** Following the representations received by National Treasury proposing the introduction of section 11G – *'Deduction of expenses incurred in the production of interest'*, which was subsequently taken up in the Taxation Laws Amendment Act No.17 of 2023, the proposed effective date of section 11G is for the years of assessment commencing on or after 1 January 2025.

  The withdrawal of Practice Note 31 will therefore be delayed and will coincide with the effective date of section 11G.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

No other matters of interest for a tax practice were published in the week of 4 – 10 July 2024.