

TAX PRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 18 - 24 July 2024
(Issue 28 -2024)

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TOP STORY

Ramaphosa signs pension funds amendment bill into law

President Ramaphosa has assented into law the Pension Funds Amendment Bill, which amends pension-related legislation to enable the implementation of the two-pot retirement system on 1 September 2024.

The new Pension Funds Amendment Act serves to amend several key legislative Acts including the Pension Funds Act of 1956 and the Government Employees Pension Law of 1996. In terms of this Act, pension funds are required to amend their rules, adjust their investment portfolios and prepare administrative systems to allow pension fund members to apply to access their savings component of their pension funds from the date of implementation.

As proposed with the introduction of the 'two-pot' retirement system, one-third of retirement contributions will be split into a savings component and the two-thirds into a retirement component.

Further detail of the statement from the Presidency may be accessed, [here](#).

[#StayAbreastOfTheTaxWave](#)

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Send your article to
taxqueries@thesait.org.za.

Approximately 500 – 1 500 words

MEMBERS' DIGEST

VAT and refunds: Are they getting better?

Written by: **Annelie Giles**, Chartered Tax Adviser™



South Africa follows an input-credit method of value-added tax (VAT) accounting, which allows a VAT registered vendor to claim VAT on expenses that have been incurred in the course or furtherance of its taxable enterprise. The difficulty is that there is no prescribed time period within which the South African Revenue Service (SARS) is required to pay out a VAT refund.

While there are many reasons why VAT refunds are not paid out immediately, in practice, certain themes repeatedly emerge as causing the delayed payment of refunds to vendors. Some of these themes are explored in further detail in this article.

Audit or verification of refunds

Section 190(2) of the Tax Administration Act No. 28 of 2011 (TAA) preserves SARS' right to first verify a refund before the refund is paid out. SARS will usually inform a vendor at the start of a verification or audit that, if it has a refund due, it will be paid only after the verification or audit is complete and the refund

validations are passed. It has long been an issue of contention between SARS and vendors whether SARS may withhold refunds that are not the subject of the particular verification or audit. Recent experience seems to suggest that SARS no longer places general 'stoppers' on vendors' VAT profiles, which prevent the payment of any new refund claims while SARS is auditing selected historic refund claims and that the use thereof is reserved for instances where it is justifiably warranted.

There also seems to be a general acceptance among vendors that a refund may be delayed pending the finalisation of a standard verification request (commonly regarded as a 'desk' audit, as opposed to an in-depth field audit). However, SARS has recently revised its standard VAT verification request letter, which now requires vendors to submit a substantial amount of information to SARS as listed in the letter. Vendors are usually afforded 21 business days from the date of the letter to respond but may request an extension where more time is needed.

While some aspects of the verification letter are specific to each VAT return, such as schedules and documentation supporting the declarations made in that return, other aspects are more generic, yet administratively onerous, for example, the requirement to provide detailed explanations of the nature of the business, terms of payment with customers/suppliers and financing arrangements. Vendors are also required to submit extensive financial information to SARS as requested in the letter, such as VAT control accounts for input tax and output tax, debtors and creditors ledger accounts, trial balance accounts, as well as bank statements for the selected tax period of all enterprise bank accounts. For small to medium-sized vendors, this may still be achievable within the standard 21 business day period, however, it is unclear how financial institutions such as banks and insurance companies or other large businesses with multiple divisions and product lines, are to comply with these requests within a reasonable timeframe; all the while, their VAT refund payments are placed on hold until the conclusion of the verification process.

What is more concerning is the sheer amount of information requested by SARS as this bears hallmarks of a typical SARS audit or request for relevant material under section 46 of the TAA. SARS recently confirmed that the estimated assessment functionality under section 95(1)(c) of the TAA has now been implemented for VAT. Therefore, if not carefully considered, a vendor's response to a standard verification request could lead to an estimated assessment being raised by SARS. This will also apply where a vendor has not provided all relevant material requested by SARS during the VAT verification process.

An estimated assessment becomes final and is not subject to objection and appeal, if the vendor does not submit the required relevant material within 40 business days from the date of the estimated assessment (or an extended period approved by SARS) as contemplated in section 95(6) of the TAA, read with section 100(1)(a)(i). Therefore, it is unavoidable for vendors to provide the requested information to SARS even if the new standard verification letter requests the same voluminous information from a vendor on more than one occasion.

Outstanding debt

SARS is increasingly taking debt collection steps against vendors by applying outstanding VAT refunds against outstanding tax debts within the set-off mechanism provided for by section 191 of the TAA.

Section 190(3) of the TAA provides that SARS must authorise the payment of a refund before the finalisation of the verification or audit (or investigation, inspection and even criminal investigation) if security in a form acceptable to a senior SARS official is provided by the taxpayer. Generally, SARS requires vendors to tender security in the form of a bank guarantee for the full amount of the outstanding VAT refunds sought to be released. If, following the finalisation of the verification or audit, it is concluded that the refunds were not properly payable, SARS may recover the refunds (plus interest) from the vendor in terms of section 190(5) of the TAA.

The issue becomes more complicated where there is an active tax dispute with SARS and the vendor's suspension of payment request regarding the disputed assessment was rejected. Even though security may be tendered to suspend the payment of a disputed assessment, SARS will often proceed to set off the tax debts (debt equalisation) against a vendor's outstanding VAT refunds on unrelated tax periods in terms of section 164(1) of the TAA (commonly referred to as the 'pay now, argue later' rule). In some instances, vendors may only realise for the first time that SARS has performed a set-off when they attempt to follow up on the payment of their outstanding VAT refunds or when they notice debt-equalisation entries on their SARS VAT statements of account and find that the VAT refunds were absorbed by the disputed assessments.

Verification of bank details

Another reoccurring theme is a request by SARS for a vendor to verify its banking details shortly after a VAT refund becomes due and payable, notwithstanding that the vendor has previously provided its banking details to SARS when it first registered for VAT. While there certainly is appreciation for the need to ensure that SARS has the most up-to-date banking details on record, the documentation required to verify banking details and the process involved often resemble that of an original VAT registration application and can be time consuming.

The issue is compounded for non-resident suppliers of electronic services given that these vendors do not have any physical presence in South Africa. Electronic service providers are not required to have South African bank accounts yet, in practice, SARS is not willing to make refund payments to foreign bank accounts and instead advises these vendors to offset their refunds against future VAT returns that are in a net payable position. This approach leads to various practical challenges. Firstly, the timing of any such set-off is not within the electronic service provider's control and can lead to late payment penalties and interest being imposed on the VAT payable

return; secondly, it is unclear which SARS branch office(s) and/or SARS agent(s) are to be approached to arrange for such set-off to be performed at the relevant time or what the process entails; and thirdly, prescription of VAT refund claims could apply if not timeously paid out due to invalid banking details.

Even though there are no tax legislative impediments in this regard, there does not appear to be a straightforward solution. In addition, the VAT119i indemnity form, which ordinarily allows VAT refunds to be paid out into a group company's South African bank account in certain instances, does not seem to provide the necessary comfort to SARS in this regard. Even so, it is not clear on what basis the South African group company would be able to remit the refunds, once received from SARS, to the non-resident electronic service provider without due regard to potential exchange control implications and related requirements.

Where to from here?

While one would like to buy into the general sense that progress is being made to ensure the timeous payment of VAT refunds, the reasons for delays have not fundamentally changed. The danger of not addressing these delays is that vendors may ultimately seek means to ensure that they are not in a refund position.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Taxpayer's obligation to retain supporting documents in terms of the TAA

Section 29 of the Tax Administration Act No. 28 of 2011 (the TAA) details the requirements for a taxpayer to retain documentation for a period of five years under specific circumstances:

“29. Duty to keep records—

(2) The requirements of this Act to keep records, books of account or documents for a tax period apply to a person who —

(a) has submitted a return for the tax period;

(b) is required to submit a return for the tax period and has not submitted a return for the tax period; or

(c) is not required to submit a return but has, during the tax period, received income, has a capital gain or capital loss, or engaged in any other activity that is subject to tax or would be subject to tax but for the application of a threshold or exemption.

(3) Records, books of account or documents need not be retained by the person described in —

(a) subsection (2) (a), after a period of five years from the date of the submission of the return; and

(b) subsection (2) (c), after a period of five years from the end of the relevant tax period.”

Where a taxpayer was required to submit a return and failed to do so, the 5-year retention period would not apply. This would mean that if SARS demands the submission of a return older than five years, the taxpayer must still be able to produce the supporting documents until five years after the return was submitted.

A practical example of this would be: If the taxpayer failed to submit the 2017 income tax return (7 years ago), and SARS demands the submission of the return in July 2024. Once the taxpayer submits the 2017 tax return on 1 August 2024, the taxpayer must then retain the supporting documents until 31 July 2029.

Some taxpayers have opted to submit affidavits to SARS when they failed to submit the returns timeously. We have noted many cases where SARS has rejected the affidavits because of the taxpayer's failure to comply with the public notice issued in terms of Section 26 of the TAA.

Update on SARS blocking 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.

*In response to this decision, SAIT had made a [submission](#) to SARS in order to request the reconsideration of this decision with the hopes of restoring the status quo for the submission of older tax returns.

On Friday, 19 July 2024, SARS recoded the eFiling system to allow tax practitioners to submit returns older than 5 years on behalf of their individual clients. During the KwaZulu-Natal RCB meeting held on 22 July 2024, SARS confirmed that returns older than 5 years could be submitted on eFiling under the following circumstances:

- The return is being submitted by a registered tax practitioner;
- Penalties are being levied for the outstanding; and
- Where a Voluntary Disclosure segment has been opened.

If members continue to experience challenges accessing the returns in the above circumstances, they are encouraged to inform SAIT via the [TaxHelpline](#).

Reminder on system glitches as Filing Season 2024 kicks off

Historically, the Corporate Income Tax return (ITR14) would be made available at the start of the individual Filing Season. This year, however, during the Gauteng South regional meeting held on Wednesday, 17 July 2024, SARS representatives confirmed that the 2024 Corporate Income Tax return (ITR14) will only be available from **13 September 2024**.

SARS is currently finalising the return to include all the legislative changes which came into effect for the 2024 year of assessment. The prototype of the 2024 ITR12T return for trusts will also be available on 13 September 2024 in preparation for the Trust Filing Season commencing on 16 September 2024.

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. eFiling users not being able to log into their eFiling profiles; and
2. 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).

Feedback from the RCB/SARS regional and national meetings

Feedback from the following regional meetings can be accessed below:

1. [Gauteng South](#) held on 17 July 2024; and
2. [KwaZulu-Natal](#) held on 22 July 2024;

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Eastern Cape for 14 August 2024;
2. Witbank, Mpumalanga tentatively scheduled for 16 August 2024;
3. Gauteng North for 22 August 2024;
4. Free State and Northern Cape for 9 September 2024;
5. KwaZulu-Natal for 9 September 2024;
6. Free State and Northern Cape for 11 November 2024;
7. Gauteng South for 13 November 2024;
8. Gauteng North for 21 November 2024; and
9. KwaZulu-Natal for 25 November 2024.

Other meetings of interest

1. SARS National Operations meeting rescheduled for 1 August 2024;
2. RCB forum meeting scheduled for 10 September 2024;
3. RCB forum meeting scheduled for 12 November 2024; and
4. 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 (unchanged).

Key Operational News

Reminder on SARS updating the Tax Directives software for the Two Pot Retirement system

To facilitate the upcoming two-pot retirement system changes, SARS announced that they will be making enhancements to the Tax Directives process. The changes are detailed in [IBIR-006 Tax Directives Interim Specification Version 6.704](#). Trade testing commenced on 1 July 2024 and will run till 16 August 2024. Should tax practitioners wish to be part of the trade testing of the tax directives, please follow these steps to submit test files:

- **Step 1:** Before testing can commence, you will need to email 10 taxpayer reference numbers to ncts@sars.gov.za to ensure 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.
- **Step 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.

Reminder on fraudsters finding new ways to beat the tax system

With Filing Season 2024 underway and many other taxpayers having received their auto-assessments and awaiting tax refunds 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.

In the past week, SARS identified two new auto-assessment and refund scams doing the rounds, in addition to the three scams identified earlier this month.

1. [Complete you refund](#) – Where the fraudsters indicate that the taxpayer is eligible for a refund and must access a link for phishing purposes;
2. [Auto-Assessment](#) – Where fraudsters indicate that you have been auto-assessed and should access the Notice of Assessment and act as instructed.
3. [Outstanding tax payment](#) - Where fraudsters report to be SARS debt collectors and provide fake banking details to collect 'outstanding tax payments';
4. [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
5. [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

- 18 July 2024: SARS published the [July 2024 issue of the Monthly Tax Digest](#) which covered the followed topics:
 - 2024 Individual Tax Filing Season Open!;
 - What is Filing Season?;
 - What happens after an Income Tax Return (ITR12) is submitted?; and
 - Top tips.

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 18 – 24 July 2024.

Key tax practitioner news

No other key tax practitioner news were published during the week of 18 – 24 July 2024.

Government & stakeholder newsletters

No government & stakeholder newsletters were published during the week of 18 – 24 July 2024.

Other tax practitioner access and functionality publications and announcements

- **24 July 2024:** The SARS Spring branch was closed due to water disruptions at the branch office. SARS committed to honour all the virtual appointments.
- **22 July 2024:** SARS published the Mthatha [mobile tax unit schedule](#) for July and August 2024.
- **18 July 2024:** SARS published the North West [mobile tax unit schedule](#) for August 2024.
- **18 July 2024:** SARS published the Free State and Northern Cape [mobile tax unit schedule](#) for July to November 2024.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

No legislation, international agreements or policy matters were published during the week of 18 – 24 July 2024.

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 18 – 24 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

Reminder on SARS publishing Binding Private Ruling 404: Expenditure incurred in respect of environmental conservation

On 15 July 2024, SARS published [BPR 404](#) that outlines the tax consequences pertaining to expenditure incurred in the process of securing land that is to be declared as a nature reserve. The ruling is an interpretation and application of section 37C and section 37D of the Act, accordingly.

The Ruling contained in [BPR 404](#) is valid for 5 years commencing retrospectively on 4 March 2024 and is as follows:

- a) The expenditure incurred in respect of the acquisition of the portion of the Property to be declared a nature reserve under the relevant provisions of the National Environmental Management: Protected Areas Act 57 of 2003 (NEMPA), will be deductible under section 37D(2) commencing in the year the land becomes declared.
- b) The expenditure to be incurred in respect of historic and future improvements (excluding borrowing and financing costs) effected to the portion of the Property to be declared a nature reserve under the provisions of NEMPA, will qualify for deduction under section 37D(2) commencing in the year the land becomes declared.
- c) The cost of expenditure to be incurred in respect of environmental conservation and maintenance undertaken in terms of the agreement entered into under the provisions of NEMBA. The portion of the Property to be declared a nature reserve under the relevant provisions of NEMPA will meet the requirements of section 37C(1).

Members are encouraged to peruse [BPR 404](#) for full and further detail regarding the nature of the proposed transaction and the applicants thereto. Published court cases

Reminder on the Wiese vs CSARS court judgement

On 12 July 2024, the SCA handed down judgment dismissing with costs an appeal by Christoffel Wiese and others against the decision of the Western Cape Division of the High Court, Cape Town, in his long-standing dispute with SARS.

The appellants (Christoffel Wiese and his advisors) sought leave of the High Court to appeal its judgment before the SCA. The appellants sought the SCA's indulgence on the admissibility of the transcript of evidence presented by the appellants at an inquiry held during 2015 and 2016, and whether the assessments raised by SARS for secondary tax on companies (STC) and capital gains tax (CGT) constituted 'tax debts' for purposes of section 183 of the Tax Administration Act (TAA) – tax debts that SARS sought to recover. The effects of the High Court's adverse judgment would result in the appellants being liable for a tax bill of R216 million.

The SCA agreed with the High Court on both enquiries, holding firstly that there are no contradictions between the provisions of section 56 and 69 of the TAA, therefore rendering the transcripts admissible. This decision empowers SARS to obtain information it would otherwise not be able to acquire in pursuance of its statutory functions.

Secondly, notwithstanding that the appellants argued that the STC and CGT assessments did not constitute tax debts as contemplated by section 183 of the TAA, the SCA held a different view and agreed with the High Court that section 183 should not be construed to mean that a taxpayer's liability to pay tax due to SARS should have been determined by assessment at the time that the dissipation of assets occurred. If that was the case, a culpable third-party who intentionally assisted a taxpayer to dissipate assets to evade tax would escape liability because SARS would have not issued an assessment to that effect.

This judgment highlights the powers of SARS, the spirit of the provisions of the TAA and SARS' determination in its quest to recover taxes due to the State.

Date of delivery	Case	Relevant Legislation
12/07/2024	<p><i>Christoffel Hendrik Wiese and Others v CSARS (1307/2022)</i></p> <p>A synopsis of this case is contained in the media summary.</p> <p><i>*This summary does not form part of the judgment of the Supreme Court of Appeal.</i></p>	Tax Administration Act, 2011
<p>Summary:</p> <p>Taxation – recovery of tax debt from third party in terms of section 183 of the TAA – whether term 'tax debt' envisages existence of assessed tax indebtedness at the time of dissipation of assets to obstruct the collection of tax debt – admissibility of transcript of evidence at inquiry in subsequent proceedings in terms of section 56 of the TAA.</p>		

Other SARS publications and announcements

No other SARS publications and announcements as pertaining to legislation were announced during the week of 18– 25 July 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

No other matters of interest for a tax practice were issued in the week of 18 –25 July 2025.