TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 25 - 31 July 2024
(Issue 29 -2024)

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TOP STORIES

The importance of tax practitioners' compliance now legislated

SARS has issued IN 132 that provides guidance on when, due to tax non-compliance, a person may not register as a tax practitioner, and when SARS must deregister a registered tax practitioner.

Essentially, a natural person who provides advice on the application of a tax Act, or who completes or assists in completing a return on behalf of another person, must register with or fall under the jurisdiction of a recognised controlling body (RCB) and must register with SARS. Failure to do so will result in a tax practitioner or prospective tax practitioner being precluded from practicing as such.

Tax practitioners or prospective tax practitioners who fail to comply with the conditions outlined in the interpretation note, nevertheless continue to render services as in the capacity of a tax practitioner, will be guilty of a criminal offence, which carries a fine or imprisonment of up to two years upon conviction.

Tax practitioners are urged to remain compliant, so as not to befall the fate of deregistration. More detail is contained below.

Refund reversals officially addressed

Since Friday, 19 July 2024, SAIT and other RCBs received several complaints about the reversal of personal income tax return, particularly from Standard Bank, with little to no communication on the reasons from SARS.

On 25 July 2024, the RCB Forum took this matter up with SARS to ascertain why the refunds were being reversed and what was being done to resolve the issue at hand. On Friday, 26 July 2024, SARS issued a statement acknowledging the challenges with respect to refund reversal on some of the accounts of taxpayers. The information at SARS' disposal indicate that 30 thousand taxpayers have witnessed reversal of their refunds.

Due to the risk associated with validity of refunds payments, all refunds go through the validation process with all stakeholders in the tax ecosystem. These validations could result in refunds being flagged for verification.

By Monday morning, 29 July 2024, any remaining refunds were either released, or taxpayers were engaged to provide supporting documents where necessary. These are the normal processes in the validations of refunds.

Notwithstanding these challenges, SARS advised that they had already paid out in excess of R14 billion to 1.5 million taxpayers since the beginning of the Filing Season.

Provisional taxpayers urged to verify the solar tax credit on the IRP6

Earlier this month, it was brought to SAIT's attention that where a provisional taxpayer submitted the 2024/02 IRP6 return and claimed the solar incentive tax rebate, such rebate did not pull through to the SARS core system, thus resulting in penalties and interest where there was an underpayment of the provisional tax.

In the cases investigated and escalated to SARS, it would appear that although the section 6C credit was inputted on the IRP6 before submission, the credit would not appear once the taxpayer accesses the submitted return. Additionally, the value on the IRP6 return would differ to that value on the provisional statement of account with the statement of account disregarding the solar tax credit.

A system fix was run by the SARS IT developers on Friday, 26 July 2024, to resolve the problem. Affected taxpayers are urged to resubmit the 2024/02 provisional tax return to correct the calculation.

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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

SARS provides an update on the ITR14 availability

On Friday, 26 July 2024, SARS officially advised taxpayers that the Income Tax Return for companies (ITR14) for 2024 would be accessible from 29 July 2024 on eFiling. However, it is important to note that the current version of the form does not include the latest legislative updates.

The updated ITR14 return, incorporating the most recent amendments, will only be accessible from 16 September 2024. Companies planning to file their 2024 returns may use the current form to proceed. However, those preferring to file with the form that includes the latest legislative changes will need to wait until 16 September 2024.

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 raise 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. To address this issue, tax practitioners are required to reconfirm their status on eFiling before attempting to request or submit such returns. Once their status has been successfully reconfirmed, tax practitioners may proceed with these requests or submissions. From 26 July 2024, tax administrators linked to the tax practitioners' profile could also submit the returns older than 5 years to relieve the tax practitioners of the submission burden.

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 the 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.

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;
2. Reversal of refunds to Standard Bank accounts; and
3. 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 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 28 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 and August 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
	29/07/2024	Income Tax	**ITR14** – 2024 ITR14 without the legislative amendments made available.
	25/07/2027	Value-Added Tax	**VAT201** - Manual submissions and payments
	31/07/2024	Value-Added Tax	**VAT201** - Electronic submissions and payments
August 2024	07/08/2024	Employment Taxes	**EMP201** - Submissions and payments
	23/08/20234	Value-Added Tax	**VAT201** - Manual submissions and payments
	30/08/2024	Value-Added Tax	**VAT201** - Electronic submissions and payments
	30/08/2024	Income Tax	**1st provisional (2025)** submissions and payments for individuals, trusts and companies with a February year-end
	30/08/2024	Turnover Tax	**1st TT02 (2025)** payments for micro businesses registered for turnover tax

SAIT member resources

- SAIT Important tax dates calendar – contains important dates from January 2024 to January 2025 (updated).
- SAIT SARS contact map – links service requirements to SARS channels (unchanged).

Key Operational News

No key operational news were published by SARS during the week of 25 – 31 July 2024.

Other SARS and related operational publications and announcements

- **30 July 2024:** SARS updated the complaint guide to align with the latest list of recognised controlling bodies.

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 25 – 31 July 2024.

Key tax practitioner news

Tax practitioner engagement letters

In the last instalment of the SAIT Ethics webinar broadcast on 25 July 2024 we discussed the importance of engagement letters.

Members have a professional duty to carry out their work within the scope a valid, written engagement letter and/or valid signed contract. Often, members enter verbal agreements for professional services without outlining the necessary specifics relating to basic terms and clauses governing work scoping, timelines, costing, limitation of liability, dispute management/resolution and variation clauses.

Although members are free to choose whether to act for a client generally or in terms of specific activities, the verbal agreement leaves both member and client taxpayer at risk in instances of SARS inquiry, disputes or potential litigation. As evidenced in a number of disciplinary cases and general queries, much of the errors in client engagement can be traced back to the engagement letter, or more correctly, the lack thereof. This leads to fundamental misinterpretation of expectations, roles, responsibilities, scope of work and billing schedules, to name a few areas of disagreement.

Members should transmit an engagement letter to the client outlining the member's understanding of the scope and nature of the assignment as well as the respective parties' obligations. The client should then agree in writing. This exchange of letters serves as an explicit contract between the member and the client.

In terms of wording, carefully structured and detailed composition including appendices reflecting any variation from the original agreed terms, conditions, scope and fees is needed to ensure that engagement with the client is fully defined, and that the client understands the nature of the work that the member has agreed to undertake. This written agreement equally limits the scope of services as well as potential liability where mutual responsibilities in the administration of tax affairs are breached by the client or the tax practitioner.

For in-depth information on engagement letters, members are encouraged to access the ethics webinar which is a precursor to the launching of bespoke templates and comprehensive guidelines for members to utilise in their practices. These templates will be customised for different types of work in the tax space and include practice and interpretation guidelines which will be instructive.

Government & stakeholder newsletters

On 26 July 2024, SARS published issue 20 and 54 of the Government and Tax Practitioner Connect newsletters. The latest edition of the newsletters cover the following topics:

- Income Tax Return Filing Dates;
- Check if you are Auto Assessed;
- Verification of banking details;
- Updated guides for 2024 Filing Season; and
- Update on changes for 2024 Filing Season.

Other tax practitioner access and functionality publications and announcements

- **31 July 2024:** SARS announced that the Cape Town branch would be closed for the rest of the day.
- **26 July 2024:** SARS published the Gauteng mobile tax unit schedule for August 2024. All virtual appointments would still be honoured and physical appointments will be rescheduled as far as possible.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

No legislation, international agreements or policy matters were published during the week of 25 – 31 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 25 – 31 July 2024.

Legislative interpretation calls for comment

SARS has issued the following calls for comment:

- Draft Guide – Income Tax Benefits in Special Economic Zones
- Draft Guide – Allowances and deductions relating to assets used in the generation of electricity from specified sources of renewable energy

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

Legislative counsel publications

SARS released the interpretation note on persons not eligible to register as a tax practitioner and deregistration of registered tax practitioners for tax non-compliance

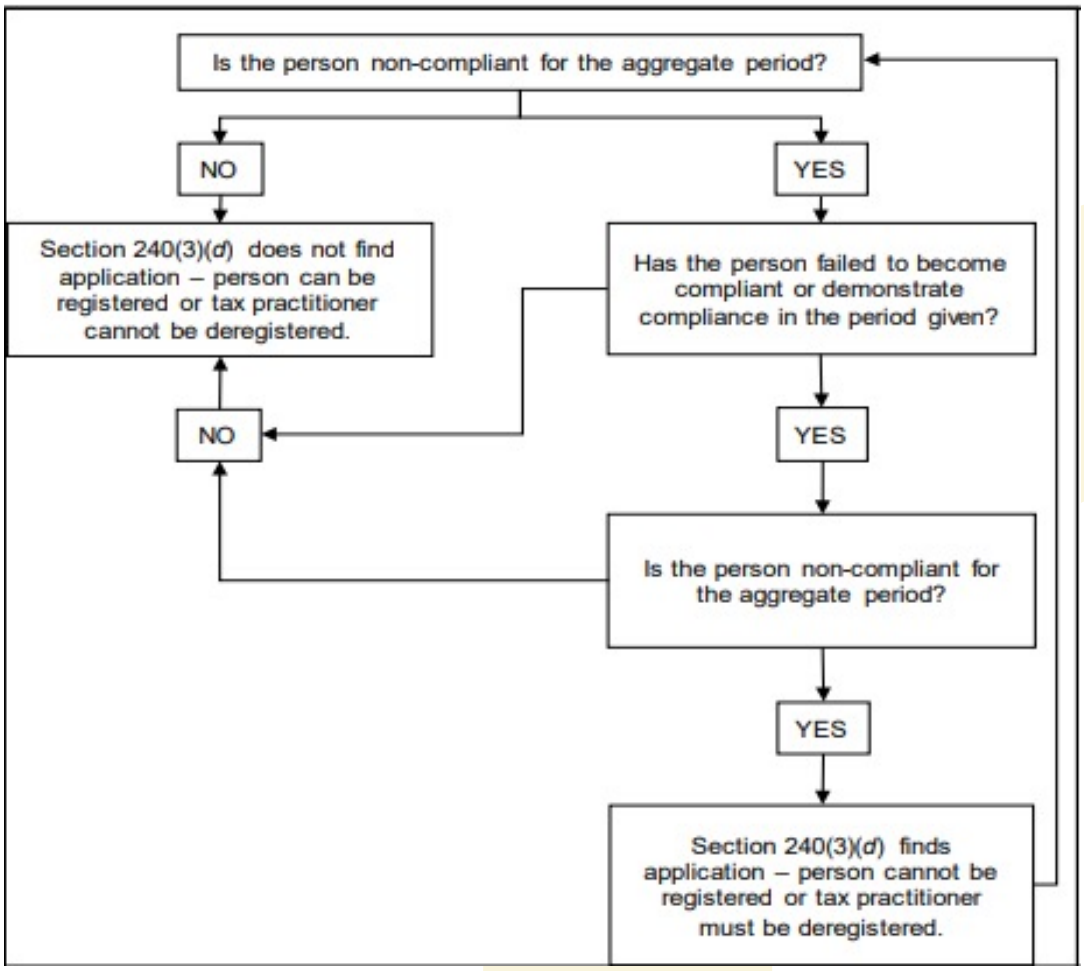
SARS has issued IN 132 that provides guidance on when, due to tax non-compliance, a person may not register as a tax practitioner, and when SARS must deregister a registered tax practitioner as well as the period of non-qualification for registration.

Subject to specified exceptions outlined in section 240 of the TAA, a natural person who provides advice on the application of a tax Act, or who completes or assists in completing a return on behalf of another person, must register with or fall under the jurisdiction of an RCB and must register with SARS within the prescribed periods.

Persons who are not registered with both an RCB and SARS, may not practice as a tax practitioner and those who do are guilty of a criminal offence, which carries a fine or imprisonment of up to two years upon conviction. As per the interpretation note, SARS is prohibited from registering a tax practitioner alternatively will deregister a tax practitioner that satisfies the following conditions, namely:

- is non-compliant for an aggregate period of at least six months during the preceding 12-month period; and
- who has failed to demonstrate compliance or remedy non-compliance within the period specified by SARS in a notice.

Both conditions are interrelated, and SARS' decision process will follow the following thought process as diagrammatically illustrated below.



Tax practitioners are encouraged to study this interpretation note for full detail regarding the conditions under which SARS can deregister one from being a tax practitioner.

SARS publishes the Binding General Ruling on the meaning of taxable income for purposes of setting-off the balance of an assessed loss by a company

The purpose of BGR 73 is to clarify the correct application of the limitation on the set off of any balance of assessed loss by a company under section 20(1)(a)(i) as amended by section 18 of the Taxation Laws Amendment Act 20 of 2021. This will also ensure consistent application.

Section 20(1)(a) of the Act provides that when determining the taxable income of a company which was derived from the carrying on of any trade, a balance of assessed loss incurred in any previous year of assessment and which has been carried forward, may be set off in the current year of assessment against the income derived by such company. Any unutilised portion of the assessed loss may be carried forward to a subsequent year of assessment.

With effect from 31 March 2023, the set-off of the balance of assessed losses for companies carried forward from the preceding year of assessment is limited to an amount that does not exceed R1 million and 80% of the amount of taxable income determined before taking into account the application of section 20.

It has come to SARS' attention that the limitation on the set-off of the balance of assessed loss by a company is not applied consistently, especially relating to the treatment of taxable

capital gains. Some taxpayers apply the limitation only on taxable income from trade and thus exclude taxable capital gains from the taxable income. While other taxpayers apply the limitation to 'taxable income' as defined in section 1(1) which includes taxable capital gains in the taxable income.

The ruling therefore dictates that having regard to the wording of section 20(1)(a)(i) and particularly the phrase *"80 per cent of the amount of taxable income"*, the calculation of the 80% limitation amount should be based on 'taxable income' as defined in section 1(1), which includes taxable capital gains.

SARS publishes the Binding Class Ruling on the qualifying purpose and third-party backed shares

The purpose of BCR 089 is to determine and provide guidance on whether cumulative redeemable preference shares (preference shares) will be issued for a qualifying purpose and whether they will constitute third-party back shares. BCR 089 provides for an interpretation and application of the following sections of the Act:

- section 8EA(1);
- section 8EA(2); and
- section 8EA(3).

The ruling stipulates *inter alia* that:

- Since the proceeds of the issue of the preference shares will be applied by the Applicant to settle debt incurred by it to acquire the target shares, the preference shares will be issued (by the issuer) for a 'qualifying purpose' as defined in section 8EA(1), provided that the target is an operating company at the time of the receipt or accrual of any dividend in respect of those preference shares; and
- On the issue date of this ruling, the preference shares will not constitute third-party backed shares as defined in section 8EA(1).

Members are encouraged to study BCR 089 for full detail pertaining to the proposed transaction, parties to the transaction and full ruling.

SARS publishes the Binding Private Ruling on the third-party backed shares and hybrid interest

The purpose of BPR 405 is to determine whether cumulative redeemable preference shares (preference shares) will be issued for a qualifying purpose and whether they will constitute third-party back shares. The funds raised from the issue of the preference shares will be advanced as a loan and the ruling determines whether the return received in respect of the loan will be regarded as hybrid interest.

BPR 405 considers the interpretation of the following sections of the Act:

- section 8EA(1), (2) and (3);
- section 8FA(1) and (2);
- section 10(1)(k);
- section 24J(1) - definition of 'interest'; and
- section 64F.

The ruling indicates *inter alia* that:

- Since the proceeds of the issue of the preference shares will be applied by the applicant to settle debt incurred by it to acquire the target shares, the preference shares will be issued (by the co-applicant) for a 'qualifying purpose' as defined in section 8EA, provided

that the target is an operating company at the time of the receipt or accrual of any dividend in respect of those preference shares;
- In terms of section 8FA(2), the interest will be deemed to be a dividend in specie and must be treated as a dividend in specie for normal and dividends tax purposes; and
- On the issue date of this ruling, the preference shares will not constitute third-party backed shares as defined in section 8EA.

BPR 405 is valid for a period of seven years. Members are encouraged to study BPR 405 for detail pertaining to the parties of the transaction, the full ruling and the terms of the proposed transaction.

Published court cases

SARS has published the following High Court cases:

Date of delivery	Case	Relevant Legislation
15/07/2024	*CSARS v Drs Mkhabele and Indunah Diagnostic Radiologists Inc and Others* (2024/036576)	Companies Act, 2008

Summary:

Urgent application. Delay in launching an application – the claimed urgency weans away. The Business Practitioner not implementing a rejected business plan. No palpable harm where the Business Practitioner is not acting unlawfully but only paying creditors of an entity under business rescue. Thus, no urgent relief is necessary. Preliminary objections for non-compliance with sections 133(1) and 145(1)(a) of the Companies Act not upheld. The application having been prompted by miscommunication which could have been corrected to obviate it, the appropriate order as to costs is that of each party is liable for its own costs.

Held:

(1) The application is struck off the roll due to lack of urgency.
(2) Each party to pay its own costs.

Other SARS publications and announcements

No other SARS publications and announcements as pertaining to legislation were announced during the week of 25 – 31 July 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

Update on Ramaphosa signing the 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.

*In National Treasury's media statement that was released on 30 July 2024, National Treasury has advised that retirement funds and trustees are now in the process of aligning their fund rules with the changes to the acts and should be communicating with fund members about these rule changes and processes to be followed for savings benefit withdrawal claims. However, fund rule amendments still need to be submitted to the Financial Sector Conduct Authority for approval prior to implementation. Many retirement funds are set to implement the 'two-pot' retirement system on 1 September 2024 as planned.

However, not all funds will likely be able to process withdrawal requests immediately on 1 September 2024, as the systems to do so and the mechanics to request such withdrawals will still be new or being installed. Retirement fund members are reminded that albeit that funds may be ready, funds will still need some time to process requests.

National Treasury has urged retirement fund members to seek trustworthy financial advice to consider the implications for withdrawals from the savings component particularly considering that administration costs and tax at marginal rates will be deducted from such withdrawals and retirement fund members will lose out on all related future growth and the retirement benefit originally intended for those funds.

National Treasury's full statement may be accessed, here.

SAIT Technical
(T) 012 941 0412
(E) taxassist@thesait.org.za