TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 01 - 07 August 2024
(Issue 30 -2024)

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TOP STORIES

2024 Draft Tax Bills and Regulations released for public comment

As anticipated, National Treasury and SARS have jointly released the 2024 Draft Tax Bills and Draft Regulations for public comment, which provides the necessary legislative amendments required to implement the more complex tax announcements made in Chapter 4 and Annexure C of the 2024 Budget Review that require greater consultation with the public.

National Treasury and SARS will be consulting with stakeholders regarding these amendments. The release of the draft bills is a critical and necessary step to shaping effective national tax legislation. Stakeholders are encouraged to engage Government to be part of meaningful change.

Members are encouraged to study the 2024 Draft Tax Bills and Draft Regulations.

Further information may be accessed below.

2025 Income Tax Return for deceased and insolvent estate not available

During the recent Tax Practice: *On the Move*: SARS Operations webinar held on Thursday, 1 August 2024, SAIT was advised by some members that the 2025 ITR12 return for deceased and insolvent estates was supposedly not available on eFiling. This would have a direct and negative impact on the executors' or administrators' ability to submit the pre-death or pre-sequestration returns.

SAIT is currently investigating this issue, and where appropriate, will engage SARS to get this issue resolved. Members experiencing a similar challenge on eFiling are encouraged to inform SAIT via the TaxHelpline. The additional examples will assist us in investigating the matter.

#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

Maybe you may now lift the veil

Written by: Nico Theron, Chartered Tax Adviser™ and **Hopolang Mollo**, Tax Article Trainee

Income tax season beckons and in line with what the doctor has ordered, a key consideration for individual taxpayers submitting their returns should be prescription. Indeed, there is a three-year prescription rule.

It is commonly accepted that an assessment prescribes three years from the date of its issuance in terms of section 99(1) of the Tax Administration Act No. 28 of 2011 (the TAA). However, the provisions of section 99(2) of the TAA, which are often neglected by taxpayers in making their income tax submissions, afford the Commissioner the ability to lift the proverbial veil of prescription.

This article seeks to distinguish between the two common assessment types anticipated this upcoming tax season and some aspects taxpayers should consider regarding prescription for both.

Auto-assessments

Over the past few years, the South African Revenue Service (SARS) rolled out the auto-assessment system in which assessments, without the submission of a return by the taxpayer, were automatically issued based on data collected by the authority from third parties, i.e. employers, medical aid schemes, banks and so forth. Presumably, the underlying assumption is that the data collected from third parties constitutes what the taxpayer's return, had it been made at their own submission, would comprise, i.e. that the auto-assessment would be full and complete in all material respects. Though colloquially termed 'auto-assessments', these assessments are technically estimated assessments made by SARS in terms of section 95(1)(a) of the TAA. Accordingly, taxpayers are afforded the opportunity to revise these assessments; in the event that the auto-assessments are inaccurate or incomplete, the prescribed period for such revision this upcoming tax season is 21 October 2024, as promulgated by the Commissioner under the provisions of section 95(6) of the TAA.

Original assessments based on a taxpayer's return

The second type of assessment is the self-proclaimed mogul's misfortune—the original assessment made by SARS based on the return submitted by the taxpayer. In making the submission of the return, taxpayers need to diligently consider their streams of income, the correct tax treatment thereof, exemptions which may apply, deductions and so forth.

Prevention is said to be better than cure. What, then, can the taxpayer do when making the submission of their tax returns to reasonably ensure the prescribed period of limitation on their assessments? Ideally, engage the assistance of a registered tax professional in filing their tax return, given the complexities of tax legislation and the arguably narrow yet wide ambit under which SARS lifts such a veil.

In the absence of the option provided for, or even where it proves to be inadequate, some common mistakes made by taxpayers, which may jeopardise the expiry of the assessment, follow.

Common mistakes made by taxpayers in submitting their tax returns

Failure to declare all income
Under the naïve assumption that no one person intentionally does not declare income to SARS, said failure specifically relates to resident taxpayers omitting income received or accrued in foreign jurisdictions.

Incorrectly classifying the nature of a receipt or accrual
Are the monies gross income or capital in nature?

For resident taxpayers working abroad
- Miscalculating the limitation on the section 10(1)(o)(ii) exemption provided for under the Income Tax Act No. 58 of 1962 (ITA).
- Failure to retain relevant supporting documentation such as travel diaries, leave applications, letters of employment, etc.

For taxpayers receiving a travel allowance
Failure to keep a travel logbook entirely or in the prescribed manner.

Document retention failure
- For the entrepreneurs: invoices relating to trade income and expenditure.
- For the philanthropists: section 18A certificates.
- For your hair transplant, medical invoices to claim a rebate on qualifying medical expenditure, not covered by your medical scheme, under section 6B of the ITA.

Common mistakes by taxpayers receiving auto-assessments

You will remember that the legislation provides for the taxpayer to revise an auto-assessment in the event that it is incorrect or incomplete. Taxpayers to whom auto-assessments are issued are thus liable to ensure their accuracy. SARS being oblivious to your after-hours trade as a streamer, does not exonerate you from paying taxes thereon. Material disclosures not made to SARS, despite the return being issued by them at their own volition, still constitute a form of misconduct that SARS, given reasonable grounds, may eventually audit and, if necessitated by the lapsing of a three-year period, lift the veil of prescription.

How do the assessments differ?

The key distinction between an auto-assessment and an original assessment based on a taxpayer's submission is arguably the alleviated administrative burden on the taxpayer in the former. Beyond that, be it an auto-assessment or an original assessment based on a return submitted by the taxpayer, the income and deductions, if any, for a single taxpayer should be identical irrespective of who made the submission. Simply put, the return ought to be full and complete in all material respects.

The importance of full and complete returns

As alluded to above, the veil of prescription may be lifted in relation to original assessments, in terms of section 99(2)(a), in the event that tax was not fully charged owing to fraud, misrepresentation or non-disclosure of material facts.

It becomes worth noting that in terms of section 95(1) of the TAA, the 'auto-assessment' constitutes an original assessment.

The requisites for SARS to lift the veil of prescription, at least insofar as they relate to fraud and non-disclosure of material facts, are definitive. As far as misrepresentation goes, there is an argument to be made that it may, in some circumstances, come down to an interpretation of the law; thus, it is not an objective truth. Nonetheless, on the assumption that all the requirements are, indeed, objective truths and either one led to the incorrect assessment of tax, SARS may, after the lapsing of a period of three years, lift the veil of prescription to issue an additional assessment.

The delicacy of the party bearing the onus of proof is often overlooked. Taxpayers often find themselves at the mercy of SARS, attempting to discharge the burden of proof which at times does not rest on them. A case in point

refers to instances where SARS raises an additional assessment post-prescription. In these instances, SARS carries the burden of proving the objective existence of fraud, misrepresentation and non-disclosure of material facts.

At the time SARS seeks to lift the veil of prescription, they ought to have a factual and legal basis for doing so. Realistically speaking, no objective test is available to the taxpayer to determine SARS' satisfaction of such requirements. Typically, only after the taxpayer has reached litigation, can the courts, an unbiased third-party, decide on the matter.

The nuances required to lift the veil of prescription cannot be stressed enough and any deficiencies on SARS' part to this effect can be used by taxpayers as a defence to their assessments. The assistance of an expert to this effect is always recommended.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

SAIT advisory on requesting interest on delayed VAT refunds

During the recent Tax Practice: *On the Move*: SARS Operations webinar held on Thursday, 1 August 2024, the issue of requesting interest on delayed VAT refunds was discussed. In the main, the issue emanates around the process to request the interest from SARS on delayed VAT refunds because the SARS system does not automatically calculate the pay out interest when the requirements are met.

To assist members understand the process around interests of delayed VAT refunds, SAIT has drafted an advisory to further discuss the topic. Members are encouraged to consult the advisory before requesting interest of delayed VAT refunds.

Reminder that provisional taxpayers are 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.

Reminder that the refund reversals have been 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.

Reminder on SARS providing 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.

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. SARS not finalising Deceased Estate Compliance letter requests;
2. eFiling users not being able to log into their eFiling profiles; 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).

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. RCB forum meeting scheduled for 10 September 2024;
2. RCB forum meeting scheduled for 12 November 2024; and
3. 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: August 2024

Month	Date	Tax Type	Notification
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 (unchanged).
- SAIT SARS contact map – links service requirements to SARS channels (unchanged).

Key Operational News

SARS issues a public notice on the extended period to correct an auto-assessment

On 26 July 2024, SARS published the public notice in terms of section 95(6) of the Tax Administration Act, 2011. The notice stipulates the extension date by which a taxpayer - eligible for automatic assessment under paragraph 3(3) of Notice No. 4918 published in Government Gazette No. 50741 dated 31 May 2024 - may request a reduced or additional assessment; the extension date is 21 October 2024. Note that the extension does not apply if the date of the automatic assessment is after 23 August 2024.

Publications Date	*GG* Notice Number	Implementation date
26 July 2024	*GG* 50986 Notice 5077	The extended date is 21 October 2024, unless the date of the automatic assessment is after 23 August 2024.
Notice in terms of section 95(6) of the Tax Administration Act, 2011, extending the date by which a taxpayer, eligible for automatic assessment under paragraph 3(3) of the Notice to Submit Returns, published in terms of section 25 of the Tax Administration Act, 2011 (see Notice 4918 in *Government Gazette* No. 50741) may request a reduced or additional assessment. Notice 5077		

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 1 – 7 August 2024.

Key tax practitioner news

The benefits of using SARS' online services

On 7 August 2024, SARS published some of the benefits of using SARS's online self-help services like eFiling or the SARS MobiApp to interact with SARS in a safe and convenient way. These entail:

- **Save and submit later –** eFilers can save their Income Tax Return to submit it later. This gives more time to review the information before submission.
- **Comprehensive history –** eFilers have a full history of all submissions, payments, and electronic correspondence available at the click of a button. The system allows taxpayers and tax practitioners to view the history of their Income Tax Return submissions at their convenience.
- **Correspondence inbox –** eFilers have a dedicated inbox to check the latest notifications from SARS. SMS and email notifications assist in the submission process to ensure returns are submitted before the due date.
- **Reduced errors and faster processing –** The simplicity of the eFiling process results in fewer errors and quicker processing cycles for individuals and businesses. Embedded functions within the Personal Income Tax Return (ITR12) such as pre-populating fields and pop-up warning messages, help guide you through the process and prevent mistakes.
- **Opportunity to revise –** eFilers can revise their initial tax return declaration via eFiling. This function allows taxpayers and tax practitioners to resubmit corrected information to ensure an accurate assessment.

For more information on the Filing Season 2024, visit the Filing Season 2024 webpage.

Reminder on 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.

Reminder on previously published 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

- **1 August 2024:** SARS scheduled maintenance to the digital platforms which took place on Saturday, 3 August 2024 from 20:00 to 01:00 Sunday, 04 August 2024. During this time, the system may have been unavailable.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy & international agreements

Legislation

Release of the 2024 Draft Tax Bills and Regulations for public comment

On 1 August 2024, National Treasury and SARS jointly released the 2024 Draft Tax Bills and Draft Regulations for public comment, which give effect to and provide clarity to the necessary legislative amendments required to implement the more complex tax announcements made in Chapter 4 and Annexure C of the 2024 Budget Review.

Key draft legislative amendments being proposed include:

- Curbing the abuse of the employment tax incentive scheme.
- Reviewing the connected person definition in relation to partnerships.
- Relaxing the assessed loss restriction rule under certain circumstances.
- Reviewing the prohibition against transfers of assets to non-taxable transferees in terms of an 'amalgamation transaction'.
- Clarifying anti-avoidance rules dealing with third-party backed shares.
- An investment allowance for automotive companies investing in production capacity for electric and hydrogen-powered vehicles in South Africa.
- Further refining the definition of 'exchange item' for determining exchange differences.
- Reviewing the interaction of the set-off of assessed loss rules and rules on exchange differences on foreign exchange transactions.
- Retrospective amendment applicable to fuel products of heading 27.10.
- Implementing the Arena Holdings Constitutional Court judgment regarding access to tax records.
- Clarifying provisions relating to original assessments where no return is required or a taxpayer voluntarily submits a return.
- Clarifying the right to appearance before the tax court by taxpayers' representatives who are not legal practitioners and the taxation of legal costs where SARS legal practitioners appear for SARS.
- Reviewing of dispute resolution proceedings to improve their efficiency.
- Removing of grace period for new company to appoint a public officer.

National Treasury and SARS have also published the following draft regulations and amendments:

- Draft Regulations on the method for determining the VAT liability in respect of casino table games of chance, issued in terms of section 74(2) of the Value-Added Tax Act;
- Draft Carbon Offset Regulations;
- Draft Regulations on the domestic reverse charge issued in terms of section 74(2) of the Value-Added Tax Act; and
- Draft Regulations on Electronic Services for the purpose of the definition of 'electronic services' in section 1 of the Value-Added Tax Act.

Members may access the 2024 Draft Tax Bills and Draft Regulations, here, which includes all relevant documentation as well as associated draft explanatory memoranda that sets out the details regarding to the aforementioned proposed tax amendments.

In the main, the due date for commentary is 31 August 2024. SAIT Tax Technical as well as the SAIT Technical workgroups will be making submissions on all the proposed amendments. Should you wish to provide your commentary, please circulate your input to ksesana@thesait.org.za by no later than **21 August 2024**.

- Draft Revenue Laws Amendment Bill 2024
- Draft Taxation Laws Amendment Bill 2024
- Draft Tax Administration Laws Amendment Bill of 2024
- Draft Regulations on Electronic Services for the purpose of the definition of electronic services
- Draft Regulations on the method for determining the VAT liability in respect of casino table games of chance
- Draft Carbon Offset Regulations Prescribing Carbon Offsets in terms of Section 19(C) of The Carbon Tax Act 1
- Domestic Reverse Charge Regulations

For more information on the call for comment, click 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 1 – 7 August 2024.

Legislative interpretation calls for comment

SARS has issued calls for comment as pertaining to the following;

- 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
- Draft Guide– Mineral and Petroleum Resources Royalty Act

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

Legislative counsel publications

SARS has published the following Binding Private Rulings:

1. **BPR 407 - Generation and supply of renewable energy**

   This BPR considers the application and interpretation of section 12BA of the Act.

   The ruling outlined herein determines the deductibility of expenditure to be incurred by a company installing photovoltaic solar energy plants on lessors' premises to be used by an applicant which is a resident company to supply solar electricity to companies within the same group of companies as the applicant in terms of power purchase agreements. These companies are part of a global group of companies with a South African footprint as well as resident subsidiaries that are subsidiaries within the same group of companies.

   Interestingly, the ruling outlines *inter alia* the costs incurred that pertain to new and unused components that are applied to measurement of electricity consumption by the

subsidiaries (for billing purposes), which are specifically excluded from the deduction under section 12BA. Members are reminded of the policy rationale behind section 12BA – being that the incentive is only applicable in respect of utilisation of among others new and unused components that are used for the generation of electricity.

Members are encouraged to study BPR 407 for further and full detail.

2. **BPR 408 - Corporate restructuring using section 42 of the Act**

The BPR considers the application and interpretation of several provisions in the Act, the Eighth Schedule to the Act and the STT Act.

This ruling determines the tax consequences of a corporate restructuring involving the disposal of shares in terms of section 42 of the Act. The BPR outlines the tax implications that are envisaged in a transaction whereby two resident companies (the applicant and company A) seek to restructure their shareholding for commercial reasons and to resultantly hold their shareholding in (company C) through a single entity namely, company B.

BPR 408 is valid for a period of three years from 27 March 2024. Members are encouraged to study BPR 408 for full detail pertaining to the proposed transaction, conditions and assumptions as well as the ruling.

3. **BPR 409 - Acquisition by a public benefit organisation of forfeited share incentive scheme shares**

BPR 409 outlines the income tax and securities transfer tax consequences for a public benefit organisation acquiring forfeited share incentive scheme shares.

The ruling contained herein is an interpretation and application of:

- section 10(1)(cN) of the Act;
- paragraph 63A of the Eighth Schedule to the Act;
- section 1 – definition of 'transfer' as contained in the STT Act; and
- section 8(1)(d) of the STT Act.

The parties to the proposed transaction are as follows:

Parties	Description
The applicant	A resident wholly-owned subsidiary of company A.
Company A	A resident company listed on the JSE and the holding company of the employer companies.
Employer companies	The applicant and the other operating companies within the company A group of companies that employ the eligible employees who will participate in the proposed employee share incentive scheme.
Participants	The eligible employees of the employer companies that will take part in the proposed share incentive scheme.
Trust A	A charitable trust approved as a public benefit organisation under section 30(3) of the Act established to carry out public benefit activities on behalf of the group companies.

Members are encouraged to study BPR 409 for detail relating to the transaction and the ruling made in connection thereto. BPR 409 is valid for a period of 5 years from 23 April 2024.

SARS publishes a Binding Class Ruling 090

On 5 August 2024, SARS issued BCR 090 that determines the income tax and STT consequences for employer companies of a proposed share incentive scheme. The ruling is an application of several provisions in the Act and the STT Act.

The parties to the proposed transaction are as follows:

Parties	Description
The applicant	A resident wholly-owned subsidiary of company A.
Company A	A resident company listed on the JSE and the holding company of the employer companies.
Employer companies	The applicant and the other operating companies within the company A group of companies that employ the eligible employees who will participate in the proposed employee share incentive scheme.
Participants	The eligible employees of the employer companies that will take part in the proposed share incentive scheme.
Trust A	A trust approved as a public benefit organisation under section 30(3) of the Act established to carry out public benefit activities on behalf of the group

Members are encouraged to study BCR 090 for detailed description of the transaction and the associated Ruling.

SARS publishes Interpretation Note 98 (Issue 2)

On 5 August 2024, SARS has issued Interpretation Note 98 (issue 2) that deals with tax implications incumbent upon public benefit organisations to provide funds, assets or other resources to any association of persons as outlined in section 30(1), 30(3)(f) and public benefit activity 10(iii) stipulated in part I of the Ninth Schedule to the Act.

This interpretation note provides guidance on the tax implications pertaining to:

- a conduit PBO that provides funds, assets or other resources to an association of persons carrying on PBA 10(iii) in Part I in South Africa;
- the requirement imposed under section 30(3)(f) on a conduit PBO providing funds to an association of persons; and
- the meaning of 'association of persons' Public benefit organisations.

In conclusion, a conduit (as ordinarily defined) PBO may provide funds, assets or other resources to an informal voluntary association of persons contemplated in PBA 10(iii) in Part I. The Commissioner must be satisfied in the case of any conduit PBO providing funds to any such association of persons that such conduit PBO has taken reasonable steps to ensure that the funds are used for the purpose for which those funds have been provided, which is to carry on one or more PBAs in Part I (other than PBA 10 in Part I) in South Africa.

However, a conduit PBO not carrying on its sole or principal object, which is to provide funds, assets or other resources as contemplated in PBA 10(iii) in Part I, may forfeit approval as a PBO under section 30(5).

Members are encouraged to study IN 98 (issue 2) for further detail pertaining to the following:

- Application of the law.
- A conduit public benefit organisation Section 30(3)(f) requirement.

- Association of persons.
- Tax-deductible donations.

Consequently, issue 1 has duly been archived.

SARS has published the following Secondary legislation

Notice 5086 as published in *Government Gazette* 51001 on 2 August 2024. After having regard to the implications of the exemption for the National Revenue Fund and associated tax implications in allocating this grant, this Notice serves to identify as a government grant exempted in terms of section 12P(2) of the Act, amounts credited from the National Revenue Fund to the South African Reserve Bank for contingency reserve requirements under section 2A of Act No.27 of 2024.

The exemption as announced in this Notice is deemed to have come into operation with retrospective effect from 1 July 2024.

Reminder regarding SARS' publication of interpretation note 132 pertaining to persons not eligible to register as a tax practitioner and deregistration of registered tax practitioners for tax non-compliance

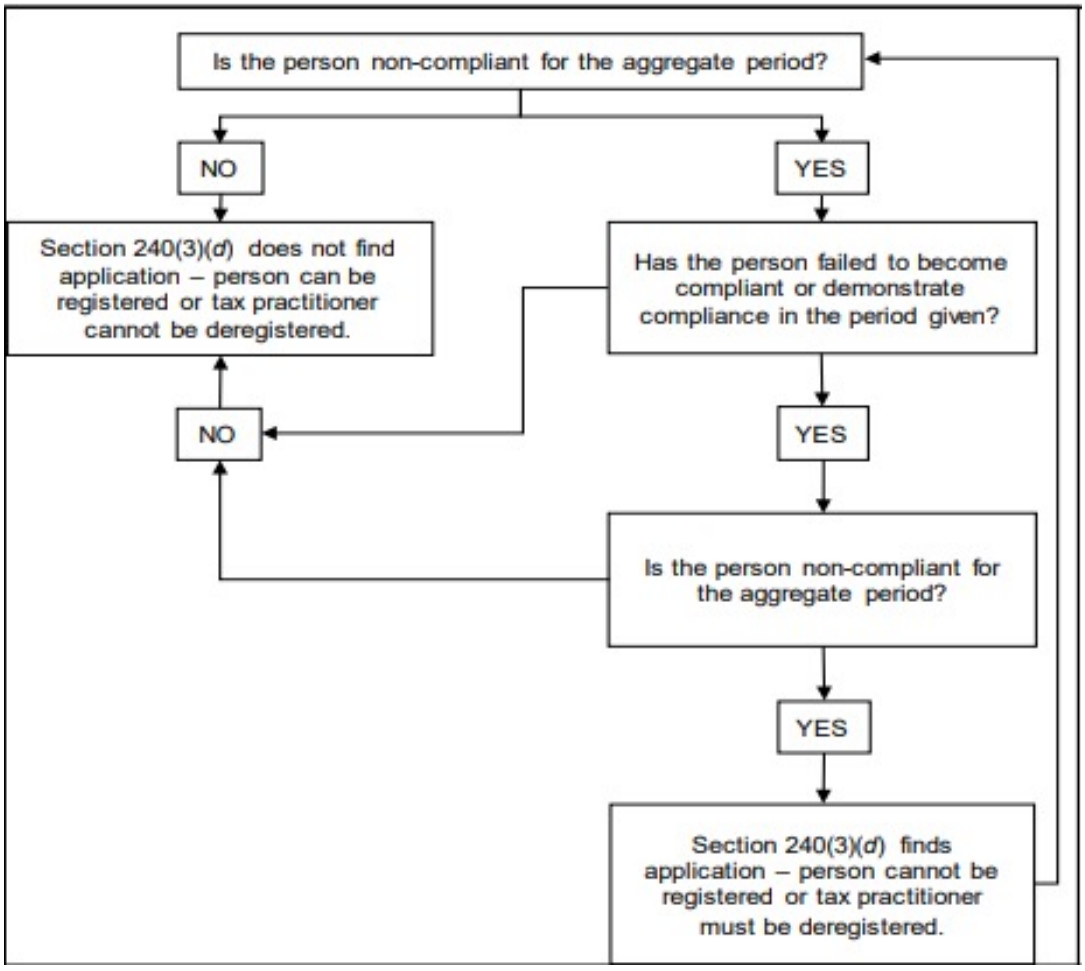
SARS has issued IN 132 that provides guidance on when, due to tax non-compliance, a person may not register as a tax practitioner, and when SARS must deregister a registered tax practitioner as well as the period of non-qualification for registration.

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.

Reminder of SARS' publication of 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.

Reminder pertaining to SARS' publication of 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.

Reminder that SARS has published a 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

No new court cases were published in the week of 1 – 7 August 2024.

Other SARS publications and announcements

SARS has shed light on the application of Section 11F(2)(a) in respect of Retirement Fund Contribution Deductions which was amended with effect from 1 March 2024.

SARS has indicated that where a person's year of assessment is less than 12 months, the maximum amount of the allowable retirement fund contribution deduction may not exceed the prescribed limit (currently R350 000) for all years of assessment within the 12-month period from 1 March of that calendar year to the last day of February in the following year.

The formula to determine the allowable retirement fund contributions is set out in Section 11F of the Income Tax Act. In summary, the allowable deduction is the lesser of the following:

R350 000; **or**	s11F(2)(a)
27.5% of the greater of – • Remuneration (excluding retirement lump sum benefits, withdrawal lump sum benefits and severance benefits); or • taxable income (including passive income and taxable capital gains) but excluding retirement lump sum benefits, withdrawal lump sum benefits and severance benefits and before any s11F and s18A deduction; **or**	s11F(2)(b)
The taxable income (excluding any taxable capital gain and retirement lump sum benefits, withdrawal lump sum benefits and severance benefits) and before any s11F and s18A deduction.	s11F(2)(c)

More information is contained in the updated guide which may be accessed, here.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

Heads-up: SARS conducting the 2024 Public Opinion Survey

SARS is conducting the 2024 Public Opinion Survey and data collectors will be visiting sampled households in all nine provinces from 1 July to 30 November 2024.

The survey is in line with SARS's Strategic Objectives 8 and 9, which are to:

- Work with and through stakeholders to improve the tax ecosystem; and
- Build public trust and confidence in the tax administration system.

The interview will be conducted face to face with the people who meet the criteria in the sampled household. The survey will be carried out by data collectors from Sigma Kairos on behalf of SARS and will be identifiable by the Sigma Kairos jackets that they will be wearing.

Furthermore, data collectors will have a letter from SARS, confirming that they are indeed from SARS.

Kindly note the following about the survey:

1. Participation is voluntary.
2. Participation or refusal thereof will not affect your future interactions with SARS.
3. The interview will be conducted in any South African official language of your choice; and
4. While you can withdraw from participating at any time you feel uncomfortable, you are encouraged to complete the survey as the findings will guide SARS regarding which areas to focus on in its mission to improve the tax ecosystem for your ease of compliance.

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