

# TAX PRACTICE

## WEEKLY HIGHLIGHTS

WEEK OF 03 -09 October 2024  
(Issue 38 -2024)

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### TOP STORIES

#### **ConCourt ruling clarifies understanding in the Thistle Trust case concerning the conduit principle and redefines tax and estate planning for tiered trusts**

In clarifying the application of the conduit principle to capital gains within multi-tiered trust structures, the Constitutional Court emphasised specific provisions of the Act and the Eighth Schedule thereto. The majority opinion determined that the conduit principle does not extend beyond the first beneficiary trust, thus holding the Thistle Trust liable for capital gains tax. Conversely, the dissenting opinion advocated for a rational and non-arbitrary application of tax laws, urging for the full implementation of the conduit principle for ultimate beneficiaries. Concerningly, the court refrained from addressing the definition of bona fide inadvertent error, as it denied SARS leave to cross-appeal regarding understatement penalties. The Constitutional Court's weighing in on this concept would have provided much needed clarity for taxpayers.

Access more information, [here](#).

#### **New medical third-party data requirements officially come into effect**

The new medical aid data reporting requirements officially came into effect at 17:00 on Friday, 4 October 2024. The major changes to the medical aid data reporting requirements inter alia include:

- Provision of data on disabled principal members and their dependents.
- Data of persons making payment on behalf of principal members; and
- Separate non-allowable from the allowable expenses, currently reported as claims not paid or covered by medical schemes on the IT3(f) certificate.

Effective from Saturday, 5 October 2024, medical aid data submissions must be provided in line with the requirements outlined in the new [External Medical Scheme Contributions BRS](#). For more information, read [here](#).

[#StayAbreastOfTheTaxWave](#)

# **PART A: COMPLIANCE & SARS OPERATIONS**

## **SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT**

No recurring SARS operational issues were identified via the TaxHelpline during the week of 3 – 9 October 2024.

### **Reminder on the next big deadline on the card: ITR12 returns for non-provisional taxpayers**

Individual non-provisional taxpayers have until Monday, 21 October 2023, to submit their 2024 annual tax returns to SARS.

It is also imperative to note that taxpayers who received an auto-assessment in July 2024 and wish to submit a correction, must submit such correction on or before 21 October 2024. If the taxpayer has reasonable ground preventing them from submit the correction by 21 October 2024, the taxpayer must request an extension for the submission of the 2024 return as the system will automatically lock the return request if an extension is not requested and granted. Where a revised return is not submitted, the auto-assessment will also not be subject to objection and appeal.

Over the past several years, SARS has implemented extremely strict penalties for taxpayers who fail to adhere to submission deadlines. Amongst others, SARS may impose a 10% once-off penalty for the late submission of the return and monthly recurring penalties based on the previous year's taxable income, ranging from R250 to R16 000 per month. These penalties are levied in terms of section 215 of the Tax Administration Act, No. 28 of 2011 (TAA) and in line with SARS' third strategic objective of making non-compliance costly for defaulting taxpayers.


Taxpayers are strongly advised to submit their returns in good time to avoid any technical difficulties as a result of system errors as was the case in the previous years.

### **Reminder on the errors experienced with the submission of the ITR14 return**

Over the past week, SAIT received several reports about the errors experienced when attempting to submit the 2023 and 2024 corporate income tax return. The initial issue was rectified over the weekend on 28 – 29 September 2024, however, this led to additional issues and error messages popping up when taxpayers attempted to submit the ITR14 return.

This issue was promptly escalated to the national eFiling support team, who have advised that the system fix to correct this error will be implemented on the evening of 11 October 2024.

Examples of the error messages include:




## Error

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Please ensure that you complete the following mandatory fields before submitting the form:

- Does the company confirm that all interests claimed were correctly limited (in terms of s11G) to non-trading interest received/accrued? is a mandatory field..

OK




## Error

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Please ensure that you complete the following mandatory fields before submitting the form:

- Recoupment in terms of s8(4)(nA) for Enhanced Renewable Energy assets as contemplated in s12BA is a mandatory field..

OK



## Error

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Please ensure that you complete the following mandatory fields before submitting the form:

- How many beneficial owners does the company have? is a mandatory field.
- Does the company confirm that the asset(s) is new and unused, owned or acquired by the company as purchaser and was brought into use for the first time during this year of assessment? is a mandatory field.
- Does the company still own the asset(s)? is a mandatory field..

OK

Although the number of affected companies has not been determined, it is anticipated that this error will cause additional delays in companies being able to timeously submit the ITR14 return.

## 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. Delays in the finalisation of 2024 income tax verifications;
2. Delays in the finalisation of VAT registrations;
3. Delays in the finalisation and payment of refunds;
4. Delays in the finalisation of bank verification cases; and
5. Delays in the finalisation of tax type deregistrations.

## 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)\*.

*\*For effective and meaningful interactions with SARS, Regional Representatives are urged to provide three specific examples of issues and matters that arise. It should be noted that the regional meetings are not platforms to raise individual escalation, but rather to discuss systemic issues affecting the tax practitioner community at large.*

### Feedback from the RCB/SARS regional and national meetings

Feedback from the previously held Mpumalanga regional RCB meeting held on 27 September 2024 can be accessed, [here](#).

## Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Free State and Northern Cape for 11 November 2024;
2. Gauteng South for 13 November 2024;
3. Gqeberha and Kariega, Eastern Cape for 14 November 2024;
4. eMalahleni, Mpumalanga for 18 November 2024;
5. North West for 18 November 2024;
6. Western Cape for 20 November 2024;
7. Gauteng North for 21 November 2024;
8. KwaZulu-Natal for 25 November 2024; and
9. Western Cape for 5 March 2025.

### Other meetings of interest

1. RCB forum meeting scheduled for 12 November 2024; and
2. 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](mailto:taxassist@thesait.org.za).

## DAILY COMPLIANCE AND ADMINISTRATION

### Due dates for reporting and payments: October 2024

Month	Date	Tax Type	Notification
October 2024	07/10/2024	Employment Taxes	<b>EMP201</b> - Submissions and payments
	21/10/2024	Income Tax	<b>ITR12 - Submission due date</b> for a return that is submitted electronically through the assistance of a SARS official at a <b>SARS office or manually</b>
	21/10/2024	Income Tax	<b>ITR12 - Submission due date</b> for a return for non-provisional taxpayers and is submitted by using the <b>SARS eFiling platform</b>
	25/10/2024	Value-Added Tax	<b>VAT201</b> - Manual submissions and payments
	31/10/2024	Other	<b>Third-Party Data (IT3)</b> - End of bi-annual third-party submissions
	31/10/2024	Employment Taxes	<b>EMP501</b> - End of employer interim reconciliation submissions
	31/10/2024	Value-Added Tax	<b>VAT201</b> - 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

#### New medical third-party data requirements officially come into effect

The new medical aid data reporting requirements officially came into effect at 17:00 on Friday, 4 October 2024. The major changes to the medical *aid data* reporting requirements inter alia include:

- Provision of data on disabled principal members and their dependents.
- Data of persons making payment on behalf of principal members; and
- Separate non-allowable from the allowable expenses, currently reported as claims not paid or covered by medical schemes on the IT3(f) certificate.

Effective from Saturday, 5 October 2024, medical aid data submissions must be provided in line with the requirements outlined in the new [External Medical Scheme Contributions BRS](#).

To ensure a smooth transition, SARS will grant a grace period of six months for partial submission of the requested data, while stakeholders obtain resources to achieve full compliance. For cases of partial compliance, reasons and a commitment date to fully comply must be submitted to [Bus\\_Sys\\_CDSupport@sars.gov.za](mailto:Bus_Sys_CDSupport@sars.gov.za).

#### Reminder on the mismatches in trust registration numbers remaining a hurdle

On 30 September 2024, the submission deadline for the IT3(t) returns, SARS published the trusts' frequently asked questions (FAQs) on the [trusts webpage](#). The FAQs covers seven main questions which include, amongst others:

1. Due to delays experienced by trusts who are deregistering at the Masters Office, deregistration at SARS is prevented. Further distributions of income will not be possible at this point. Can these Trusts be excluded from the IT3(t) SARS submission event?;
2. Do I need to submit a return if my trust made no distributions during the year of assessment (YOA)? Further, if a NIL return will be required from 2025 – will the notice to submit third-party returns incorporate this requirement?; and
3. Where representative taxpayers of trusts have experienced problems in submitting the IT3(t), will SARS be penalising these trusts for late filing?

However, a fundamental question which has not been answered is, what is SARS doing about the mismatches between the different trust registration numbers which is preventing trustees and tax practitioners from activating a registered representative and the IT3 tax type?

Without a way forward on this pertinent question, it is expected that many trusts will remain non-compliant with the submission of the third-party data. SARS is yet to share the statistics on the number of IT3(t) returns received and processed thus far, however, we do anticipate that these numbers will not be as significant as initially expected. Once official confirmation has been received, we will advise accordingly.

## Reminder on the company Income Tax deregistration process at SARS

*“Companies that are registered or generating profits or income in South Africa are subject to the Company Income Tax (CIT). These companies must register for CIT with SARS, file annual and provisional tax returns, and pay their CIT liability on time to avoid penalties and interest charges.*

*However, a company may no longer need to register for CIT if it has ceased trading, undergone liquidation or dissolution, or has no taxable income or assets in South Africa. In these cases, the company can apply for deregistration from CIT with SARS and stop receiving CIT compliance obligations.*

### **Applying for CIT deregistration with SARS**

*The company must ensure that it has filed all its previous tax returns and paid all its tax liabilities before applying for CIT deregistration. If the company has any outstanding tax obligations, it must contact SARS to arrange for settlement or dispute resolution. Before approving the application, SARS may also conduct an audit or verification of the company's affairs.*

*To be deregistered, the company must prove that it meets one of the following criteria:*

- *It has ceased to trade or carry on any business activity in South Africa;*
- *It has been liquidated or dissolved by court order or voluntary resolution;*
- *It has no taxable income or assets in South Africa and does not intend to derive any in the future; or*
- *It is a dormant company that has not traded for at least three consecutive years and has no intention of trading in the future.*

*It must also submit supporting documents, which may include:*

- *A letter from the company's Board of Directors or a resolution stating the reasons for applying for CIT deregistration;*
- *A copy of the company's final financial statements or audited accounts;*
- *A copy of the company's liquidation or dissolution notice or certificate;*
- *A declaration of assets and liabilities of the company;*
- *A confirmation of the company's bank account closure or balance; or*

- *Proof of payment of any outstanding tax debts or penalties.*

*The company can submit the application and supporting documents online via eFiling, email, or at a SARS branch. Upon processing and approval of the application, SARS will issue a confirmation letter to the company and deactivate its tax reference number. The company will then no longer be liable for CIT or any related compliance obligations. However, the company must keep its records for at least five years after deregistration in case of any queries from or audits by SARS.*

### **Employer deregistration at SARS**

- *An employer who has ceased to operate or employ must apply for company deregistration to avoid further compliance obligations.*
- *The employer must submit an EMP123 form and supporting documents to SARS.*
- *The employer must pay any outstanding tax debts or penalties before they can be deregistered.*
- *The employer will receive a confirmation letter, and their tax reference number will be deactivated.”*

Extract was sourced from the [SARS SMME Connect Newsletter](#)

### **Other SARS and related operational publications and announcements**

No other SARS and related operational publications and announcements were made for the week 3 – 9 October 2024.

### **TAX PRACTITIONER MANAGEMENT**

#### **SAIT TaxHelpline – Tax practitioner access and functionality (eFiling)**

No recurring tax practitioner access and functionality issues were identified via the TaxHelpline during the week of 3 – 9 October 2024.

#### **Key tax practitioner news**

No key tax practitioner news were published during the week of 3 – 9 October 2024.

### **Government & stakeholder newsletters**

On 8 October 2024, the Office of the Tax Ombud (OTO) published issue 34 of the [FairPlay stakeholder newsletter](#) under the theme ‘Pay now, argue later’. The 34th edition of the newsletter covers the following topics:

- Systemic issues -Why they matter
- Tax tips that can save you money
- How to correct your income tax return
- Why the pay now, argue later rule in South Africa?

### **Other tax practitioner access and functionality publications and announcements**

- **3 October 2024:** SARS has cautioned taxpayers and tax practitioners to be vigilant of fraudsters pretending to be SARS employees. The emails often contain a link where a taxpayer can ‘settle an outstanding balance or debt’. Recipients of such correspondence are urged to verify the email domain.

**From:** "Charlotte Ngobeli" <austun@saa0.ac.za>  
**Sent:** Thursday, October 3, 2024 7:22:49 AM  
**Subject:** Re: FINAL DEMAND

Good Day

Kindly revert back to the below email to avoid legal collections

Kind regards  
Charlotte Ngobeli  
Debt Management - Operations  
46 Lebombo street  
ASHLEA GARDENS, 0081  
Tel: (010) 208 7330  
E-mail: [angobeli@sars.gov.za](mailto:angobeli@sars.gov.za)



On Tue, Sep 12, 2024 at 12:06 AM Charlotte Ngobeli <[angobeli@sars.gov.za](mailto:angobeli@sars.gov.za)> wrote:

**From:** Charlotte Ngobeli [<mailto:Stephano@saa0.ac.za>]  
**Sent:** Monday, 30 September 2024 02:09  
**To:**  
**Subject:** FINAL DEMAND

Good Day

Kindly revert back to the below email to avoid legal collections

Kind regards  
Charlotte Ngobeli  
Debt Management - Operations  
46 Lebombo street  
ASHLEA GARDENS, 0081  
Tel: (010) 208 7330  
E-mail: [angobeli@sars.gov.za](mailto:angobeli@sars.gov.za)

On Fri, Sep 20, 2024 at 12:06 AM Charlotte Ngobeli <[angobeli@sars.gov.za](mailto:angobeli@sars.gov.za)> wrote:

[angobeli@sars.gov.za](mailto:angobeli@sars.gov.za) has shared [full & comprehensive sars statements.pdf](#) on behalf of SARS Debt Management

**Dear**

According to the records of the South African Revenue Service (SARS), you have an outstanding balance. SARS has initiated debt recovery procedures and intends to initiate criminal proceedings with specific reference to outstanding **ASSESSED TAX debt**.

To avoid further proceedings being taken you are advised to make payment of the full outstanding tax debt within 5 business days of the date of this notice. Further legal proceedings may include, but not limited to, a Civil judgment and thereafter a writ of execution being issued.

As such and where applicable, personal liability proceedings may be initiated against the relevant person(s) in terms of the provisions of sections 156 and section 157 of the TA Act for any amount of tax due but not paid to SARS, inclusive of penalties.

Should you have any queries or wish to arrange payment of the outstanding debt please contact the writer. Full and comprehensive statements may be obtained above herein.

Should a signed and approved payment arrangement exist, kindly ignore this email.



## PART B – LEGISLATION & POLICY

### LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

#### Tax policy & international agreements

#### National Legislation

#### **Reminder: Most Favoured Nation Clause: A favoured position is soon coming to an end**

The South Africa/Kuwait Double Taxation Agreement (SA/Kuwait DTA) contained the Most Favoured Nation (MFN) clause which reduced the dividend withholding tax (DWT) to zero percent. Consequently, the context of the SA/Kuwait DTA extended the zero percent rate to certain other DTAs (such as the Dutch DTA). This means that if South Africa establishes a DTA with a third country that has a lower DWT rate, that lower rate could automatically apply.

National Treasury has been diligently working on amendments to the DWT in the SA/Kuwait DTA.

On September 18, 2024, the Kuwait government ratified the pending protocol to the 2004 SA/Kuwait DTA. This marks the first amendment to the original treaty agreement, and it will come into effect once the ratification instruments are exchanged. This agreement, signed in April 2021 after a lengthy 14-year negotiation, was ratified by South Africa but has been pending ratification from the Kuwaiti government.

The ratification of this protocol would result in the loss of these longstanding MFN benefits, significantly affecting companies with historical and future dividends declared before ratification.

### LEGISLATIVE INTERPRETATION

#### Submissions to SARS and current calls for comment

#### **Reminder of submitted calls for comment**

#### [Draft Guide on the Mineral and Petroleum Resources Royalty Act](#)

On 13 September 2024, SAIT provided commentary on the [Draft Guide on the Mineral and Petroleum Resources Royalty Act](#). The SAIT Technical team together with select members of the mining tax industry work group submitted, on a high-level basis, that in its current form the draft guide lacks the necessary detail to provide streamlined guidance to taxpayers affected within this area of taxation.

Generally, the royalty calculations in respect to mining gold, a refined mineral, is relatively straightforward and involves fewer complexities than those associated with unrefined minerals.

[SAIT's submission](#) further highlighted the need for further elaboration on the treatment of pre-2004 dumps, which do not attract royalties, particularly when mixed with materials that are subject to royalties. A further request for the provision of examples and a clearer framework for cost allocation in the EBIT calculation was made.

SAIT will monitor progress in this regard as it relates to a finalised guide.

### Draft Interpretation Note on the meaning of reserve fund under section 23(e)

On 30 September 2024, the SAIT Technical team submitted commentary on the draft interpretation note on the meaning of reserve fund under section 23(e) ([the draft IN](#)) that considers the meaning of 'reserve fund' for purposes of section 23(e) of the Act.

Our submission proposed the removal of the commentary contained in the draft IN that pertains to insurance.

The rationale for the proposal is contained in the SAIT submission, which may be accessed, [here](#).

## Legislative interpretation calls for comment

SARS has issued a call for comment pertaining to the following;

- [Draft Interpretation Note](#) – Meaning of 'similar finance charges'.
- [Draft Interpretation Note](#) – Public benefit organisations: Non-professional sport and recreation.
- [Draft Interpretation Note](#) – Diminution in the value of closing stock.

For more information on the calls for comment, click [here](#).

## Legislative counsel publications

### Publication of Binding General Rulings 27 (Issue 2) and Interpretation Note 83 (Issue 3)

Sections 20(4) and (5) of the VAT Act contains certain requirements and prescribes certain particulars that must be contained on a tax invoice, credit- or debit note (as the case may be). However, recognising that in certain industries and for certain transactions it may be challenging to comply with these prescribed particulars, the Commissioner has a discretion to approve deviations therefrom in certain circumstances as outlined in section 21(5) of the VAT Act.

SARS has published [Binding General Ruling 27 \(Issue 2\)](#) that sets out the circumstances and conditions under which:

- a vendor need not issue a tax invoice, credit or debit note; or
- the particulars required on a tax invoice may be furnished in another manner.

[Binding General Ruling 27 \(Issue 2\)](#), outlines the circumstances under which the requirements outlined in Sections 20(4) and (5) are not applicable in relation to the following approved circumstances:

1. Instalment credit agreements in respect of goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable;
2. Rental agreements for movable or immovable property;
3. Royalty agreements; and
4. Short-term insurance.

A vendor that meets the requirements outlined in BGR 27 is not required to seek prior approval from the Commissioner to refrain from issuing a tax invoice, credit note, or debit note, or to provide the required particulars in an alternative manner.

As per the guidance provided by SARS, vendors are reminded that they:

*“Should not request rulings on whether the circumstances and conditions in the said BGR are met, as this involves a confirmation of a fact, as opposed to the interpretation of the law. However, vendors that are not able to comply with the criteria stipulated in BGR 27, may apply for a decision in writing by sending an e-mail to [VATrulings@sars.gov.za](mailto:VATrulings@sars.gov.za).”*

Furthermore, the application should consist of a completed VAT 301 form and must comply with inter alia the provisions of section 79 of the TAA.

[Binding General Rulings 27](#) has been duly archived. Members are encouraged to peruse [Binding General Ruling 27 \(Issue 2\)](#) for full detail regarding the application of the legislative provisions in relation to the above cited approved circumstances.

To further assist with legislative interpretation of the above provisions of the VAT Act, SARS has released Issue 3 of [Interpretation Note 83](#) that sets out interpretative guidance regarding the requirements that have to be met in order for the Commissioner to apply the provisions of section 20(7) or 21(5).

As discussed above, the VAT Act outlines specific requirements and details that must be included on tax invoices, credit notes, and debit notes. However, acknowledging that certain industries and transactions may face challenges in meeting these requirements, the Commissioner has the discretion to approve deviations under specific circumstances. The following requirements must be met:

- **Record sufficiency:** The Commissioner must be satisfied that there are adequate records to establish the particulars of a supply or category of supplies.
- **Impractical requirement:** The vendor must demonstrate to the Commissioner that it is impractical to issue a full tax invoice, credit note, or debit note.

[Interpretation Note 83 \(Issue 2\)](#) has been duly archived. Members are encouraged to peruse [Interpretation Note 83 \(Issue 3\)](#) for full detail regarding the application of the legislative provisions in relation to the above cited approved circumstances.

## SARS publishes Binding General Ruling 74

SARS has published [Binding General Ruling 74](#) that considers the VAT treatment of certain supplies of goods or services made by municipalities to a national or provincial government. This BGR sets out the VAT treatment of supplies of goods or services that are made by municipalities to national or provincial government under each method of contracting.

[Binding General Ruling 74](#) is based on the section 1(1) definitions of ‘grant’ and ‘input tax’ and sections 7(1)(a), 8(5a), (11)(2)(t) and 54 of the VAT Act and outlines the VAT implications based on the nature of the transaction and the contractual capacity of the parties to the agreement.

## Reminder regarding SARS’ publication of the General Taxation in South Africa 2024

On 25 September 2024, SARS has published a general guide to [Taxation in South Africa 2024](#). The guide provides a high-level overview of the most significant tax legislations administered in South Africa by SARS. This includes but not limited to:

- Carbon Tax Act;
- Customs and Excise Act;
- Employment Tax Incentive Act;
- Income Tax Act;
- Tax Administration Act; and
- Value-Added Tax Act.

## Reminder regarding SARS' publication of the General Tax Guide for Small Businesses (2023/2024)

On 26 September 2024, SARS published a [Tax Guide for Small Businesses \(2023/2024\)](#). This guide is a general guide dealing with the taxation of small businesses such as sole proprietors, partnerships and companies not part of large groups. The guide aims to consider the typical taxation issues of an average business trading in South Africa.

## Reminder regarding the publication of interpretation note 134

On 26 September 2024, SARS published [interpretation Note 134](#) that provides general guidance on the application of the deemed disposal of assets by the deceased, a deceased estate, and the transfer of assets between spouses.

This interpretation note considers the tax implications outlined in sections 9HA, 9HB and 25 of the Act. It is to be noted that this interpretation note does not provide for a detailed consideration of the administration of deceased estates beyond the scope of the above sections of the Act.

Members are encouraged to peruse this interpretation note for further detail.

## Published court cases

### SARS published the following Constitutional Court judgment

On 2 October 2024, SARS has published the following Constitutional Court case:

Date of delivery	Case	Relevant Legislation
02/10/2024	<a href="#">The Thistle Trust v CSARS (CCT 337/22)</a>	Income Tax Act, 1962 Tax Administration Act, 2011
<b>Keywords:</b> Income Tax Act 58 of 1962 — Section 25B — Section 26A — conduit principle — capital gains tax — beneficiaries. Tax Administration Act 28 of 2011 — understatement penalties — bona fide inadvertent error.		
<b>Summary</b> On 2 October 2024, the Constitutional Court handed down judgment in an application for leave to appeal and a conditional application for leave to cross-appeal against a judgment of the Supreme Court of Appeal. The application concerned the applicability of the 'conduit principle' to capital gains when distributed by multiple trusts in the same tax year in terms of the common law, section 25B and paragraph 80 of the Eighth Schedule of the Income Tax Act 28 of 1962. The conditional cross-appeal concerned whether the circumstances giving rise to the tax treatment by the Thistle Trust warranted the imposition of an understatement penalty. A detailed synopsis of this judgment as published by the Constitutional Court may be accessed, <a href="#">here</a> .		

In clarifying the application of the conduit principle to capital gains within multi-tiered trust structures, the Constitutional Court emphasised specific provisions of the Act and the Eighth Schedule thereto. The majority opinion determined that the conduit principle does not extend beyond the first beneficiary trust, thus holding the Thistle Trust liable for capital gains tax. Conversely, the dissenting opinion advocated for a rational and non-arbitrary application of tax laws, urging for the full implementation of the conduit principle for ultimate beneficiaries. Concerningly, the court refrained from addressing the definition of bona fide inadvertent error, as it denied SARS leave to cross-appeal regarding understatement penalties. The Constitutional Court's weighing in on this concept would have provided much needed clarity for taxpayers.

The legal precedent set by this ruling is of broad public importance, affecting capital gains tax liabilities for trusts in tiered structures for all tax years up to 2021. Its ramifications extend to other trusts and beneficiaries impacted by the conduit principle and represents a pivotal moment for tax and estate planning strategies involving tiered trusts.

This decision carries significant financial implications, compelling trust founders and trustees to reassess how the judgment impacts the tax liabilities on capital gains received and distributed by their trusts.

Members may also access SARS' media statement regarding the outcome of this case, [here](#).

## SARS published the following tax court judgments

Date of delivery	Case	Relevant Legislation
15/07/2024	<a href="#">IT 45791; VAT 22288</a>	Tax Administration Act, 2011
<b>Keywords:</b> Default judgment-condonation application.		
8 July 2024	<a href="#">IT 45781</a>	Income Tax Act, 1962
<b>Keywords:</b> Deductibility of advance payments: Whether an advance payments amount may be deducted for income tax purposes.		

## Other SARS publications and announcements

No other SARS publications and announcements were published in the weeks of 3 – 9 October 2024.

## OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

No other matters of interest for a tax practice were published in the weeks of 3 – 9 October 2024.