TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 15 - 21 February 2024
(Issue 6 -2024)

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TOP STORIES

Highlights from the 2024 Budget Speech

The Budget Speech took place on 21 February 2024 before a sitting of the National Assembly at the Cape Town City Hall.

The Budget Speech presented an overall synopsis of the state of the country's finances, amendments to tax, spending plans for the upcoming fiscal year, distribution of revenue across spheres of government and distribution of expenditure across national departments.

Below are the tax related highlights of the Budget Speech.

Deadline for the provisional tax and taxpayers registered for turnover tax approaching

The end of the 2024 year of assessment for individuals and companies with a February year-end is on Thursday, 29 February 2024. As such, the second provisional tax returns, covering the period 1 March 2023 to 29 February 2024, are due. Affected individuals and companies are encouraged to submit their IRP6 returns on or before the due date to avoid penalties and interest.

For individual taxpayers, SAIT has prepared an advisory on provisional tax: *the requirements and implications*, to assist taxpayers and tax practitioners in the determination of their provisional tax status.

For more information, read here.

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Let’s feature your article on the **Tax Practice: Weekly Highlights.**

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

Approximately 500 – 600 words

MEMBERS' DIGEST

TAX AVOIDANCE VS TAX EVASION: AN ANALYSIS OF THE GENERAL ANTI-AVOIDANCE RULES

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Tax avoidance vs tax evasion: an analysis of the general anti-avoidance rules

Introduction

Want to structure your affairs in such a way that you pay the least amount of tax possible? Be sure not to accidentally find yourself guilty of tax evasion!

Tax avoidance vs tax evasion

So what is tax avoidance and tax evasion anyway?

On the one hand, tax avoidance involves the use of legitimate means, i.e., employing provisions of tax legislation in order to pay less tax[1]. On the other hand, tax evasion involves the use of illegal means by taxpayers to free themselves from a tax burden[2].

The court in *Commissioner for South African Revenue Service v NWK Ltd*[3] held that the taxpayer may organise their financial affairs in such a way as to pay the least tax permissible. The court did provide, in addition, that there is, however, something wrong with dressing up or disguising a transaction to make it appear to be something that it is not, especially if this has the purpose of tax evasion, amongst other things.

So technically, there is nothing wrong with taxpayers arranging their affairs to pay the least amount of tax possible. A legitimate tax avoidance scheme is one where taxpayers have arranged their affairs to minimise their tax liability in a manner that does not involve fraud, dishonesty, misrepresentation or other actions designed to mislead the Commissioner[4].

On the contrary, tax evasion involves the non-payment of a tax that would properly be chargeable if the taxpayer had made a full and true disclosure of income and allowable deductions[5].

Tax evasion can include, but is not limited to, the creation of false financial statements or deliberately presenting false information on a tax return. Non-compliance with Tax Acts[6], as well as the evasion of tax with intent, are criminal offences and are subject to severe penalties[7].

So far, we have learned that tax evasion is bad in that it is not permitted by the law; but tax avoidance? The courts seem to understand.

1 M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135
2 M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1136
3 (27/10) [2010] ZASCA 168; 2011 (2) SA 67 (SCA) ; [2011] 2 All SA 347 (SCA) (1 December 2010)
4 SARS Practice Note 5 stamp duty, income tax, secondary tax on companies, tax on retirement funds, value added tax and uncertificated securities tax implications of lending arrangements in respect of marketable securities (14 APRIL 1999)
5 M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1136
6 Such as the Income Tax Act 58 of 1962, the Value Added Tax Act 89 of 1991 and the Tax Administration Act 28 of 2011
7 Section 234 and 235 of the Tax Administration Act 28 of 2011

Notwithstanding the legality of tax avoidance arrangements, the implications are that such schemes often result in significant loss of tax revenue to the fiscus[8]. This, then, necessitates the development and imposition of general anti-avoidance rules, otherwise known as 'GAAR' to identify and prevent impermissible tax avoidance arrangements.

Impermissible tax avoidance arrangements

Section 80A of the Income Tax Act defines an impermissible avoidance arrangement as an arrangement where:

- the '*sole or main purpose*' (of such an arrangement);
- is to obtain 'a tax benefit';
- with one of the 'tainting' elements[9] ;
- depending on whether the arrangement is "*in the context of 'business', or 'in a context other than business'* ". [10]

('the Test')

It is important to note that the elements of the Test must be considered in conjunction when determining whether a transaction is an impermissible tax arrangement. The determining factor is whether the manner in which the transaction was entered into or carried out, is a manner that would normally be used for business purposes other than to obtain a tax benefit.[11]

In general, SARS will assume that an avoidance arrangement is entered into or carried out for the sole or main purpose of obtaining a tax benefit, unless it is the responsibility of the taxpayer to prove obtaining a tax benefit was not the sole or main purpose of the avoidance arrangement. [12]

Beyond the (objective) test provided for in section 80A, the Income Tax Act provides for tainting elements which will be indicators of impermissible tax avoidance arrangements, which include:

- **lack of commercial substance:** including where a transaction would result in a significant tax benefit for a party but does not have a significant effect upon either the business risks or net cash flows of that party apart from any effect attributable to the tax benefit that would be obtained;[13]
- **round trip financing:** including any avoidance arrangement in which funds are transferred between or among the parties (round-tripped amounts) and the transfer of the funds would result, directly or indirectly, in a tax benefit and significantly reduce, offset or eliminate any business risk incurred by any party in connection with the avoidance arrangement.[14] ; and
- **accommodating or tax indifferent parties:** including any avoidance arrangement in which funds are transferred between or among the parties (round-tripped amounts) and the transfer of the funds would result, directly or indirectly, in a tax benefit and significantly reduce, offset or eliminate any business risk incurred by any party in connection with the avoidance arrangement.[15]

An example would be where the ownership of a vehicle belonging to an individual who is both a shareholder and an employee of a trading company is changed to a dormant company in the same group of companies on a loan account equal to the value of the vehicle at the time of the transaction. The vehicle is subsequently leased to the trading company for the exact amount required

8 M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135
9 The tainting elelments are discussed from paragraph 18 below
10 M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135
11 Section 80A of the Income Tax Act 58 of 1962
12 Section 80G of the Income Tax Act 58 of 1962
13 Section 80C (1) of the Income Tax Act 58 of 1962
14 Section 80D (1) of the Income Tax Act 58 of 1962
15 Section 80D (1) of the Income Tax Act 58 of 1962

to service the loan on a monthly basis. The trading company would be able to claim the rental amount as an allowable deduction and the creditor of the loan (the individual) would not be required to pay income tax on the money received from the dormant company as it would be the repayment of a loan.

In addition to the above, the Commissioner may treat parties who are connected persons in relation to each other as one and the same person or disregard any accommodating or tax-indifferent party or treat any accommodating or tax-indifferent party and any other party as one and the same person.[16]

How can a taxpayer rebut SARS' presumption of an anti-avoidance agreement?

As stated above, a presumption is made that an anti-avoidance agreement has been concluded where the above indicators are present and the obligation is on the taxpayer to rebut the presumption.

The substantive trigger for the exercise of GAAR, as provided by the Tax Court[17] , arises where SARS forms an opinion that there is an impermissible avoidance arrangement.

Tax consequences of impermissible tax avoidance arrangements

In essence, the Commissioner has the power to restructure or ignore transactions that amount to impermissible tax avoidance agreements.

Conclusion

Taxpayers are permitted to structure their affairs in such a way that they avoid or minimise tax payable. Provided that in structuring their affairs, taxpayers do not breach of any tax Act—this would amount to tax evasion, which is illegal.

The legislature does, however, place restrictions on taxpayers' rights to structure their affairs in the most tax-efficient manner. Taxpayers are not allowed to enter into transactions for the sole or main purpose of obtaining a tax benefit.

Where SARS is of the opinion that a taxpayer has concluded an impermissible tax avoidance arrangement, the onus is on the taxpayer to rebut the presumption on a balance of probabilities.

Should the taxpayer fail to rebut SARS' presumption, SARS may, inter alia, disregard, combine or recharacterise any steps in or parts of the impermissible avoidance arrangement.

Make sure to always check with your tax professional to avoid unknowingly breaching the GAAR!

16 Section 80F of the Income Tax Act 58 of 1962

17 Mr X v The Commissioner for the South African Revenue Service (Case No IT24502) and Mr Y v The Commissioner for the South African Revenue Service (Case No IT24503) (as yet unreported).

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

SAIT TaxHelpline – SARS operational queries

Update on appointment system not working for tax practitioners

In November 2023, SARS confirmed that all appointments were being routed for physical appointments as a result of a system error that they are aware of and in the process of resolving. It was anticipated that a system fix would be implemented in December 2023, during the annual closure period.

This issue was further escalated to the SARS Head Office, which suggested that the problem exists due to an authentication issue between the taxpayer profile and information provided by the appointment requestor (representative or tax practitioner).

Following these developments, SAIT has made a submission to SARS, with multiple examples, requesting that this problem be investigated and resolved. SAIT will follow up on this matter and provide feedback to all members as soon as it becomes available.

SAIT and other recognised controlling bodies (RCBs) have been invited by SARS to a meeting scheduled for Friday, 23 February 2024 to discuss this issue and submissions made. Members will be provided with more information as soon as it becomes available.

Issues with the ITR14 return not saving completed data (*update)

With many companies with a February year-end rushing to submit the 2023 annual corporate income tax returns (ITR14) by 29 February 2024, many taxpayers and tax practitioners have been left frustrated as the data completed on the ITR14 does not save after completion.

In several cases investigated, the main problem rests on the Balance Sheet tab and persists whether the return is saved, or a calculation is requested.

*The matter has been escalated to SARS and it is anticipated that the system fix deployed during the week will resolve the problem. Members will be provided additional feedback on the testing once it has been finalised.

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. Delay in the finalisation of VAT verifications and subsequent payment of refunds; and
2. Delays in the issuance of Deceased Estate Compliance letters.

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 following regional meetings will be available in Issue 7 of the Tax Practice: Weekly Highlights

1. Eastern Cape held on 21 February 2024;
2. Gauteng North held on 22 February 2024;and
3. Mpumalanga held on 23 February 2024.

Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. North West for 26 February 2024;
2. Emalahleni, Mpumalanga for 29 February 2024; and
3. Western Cape for 6 March 2024;
4. Free State and Northern Cape for 11 March 2024;
5. Gauteng South for 10 April 2024;
6. Gauteng North for 23 May 2024;
7. Free State and Northern Cape for 10 June 2024;
8. Gauteng South for 17 July 2024;
9. Gauteng North for 22 August 2024;
10. Free State and Northern Cape for 9 September 2024;
11. Free State and Northern Cape for 11 November 2024;
12. Gauteng South for 13 November 2024; and
13. Gauteng North for 21 November 2024.

Other meetings of interest

1. RCB/SARS national meeting scheduled for 23 February 2024;
2. RCB forum meeting scheduled for 5 March 2024;
3. SARS National Operations meeting scheduled for 18 April 2024;
4. RCB forum meeting scheduled for 4 June 2024;
5. SARS National Operations meeting scheduled for 25 July 2024;
6. RCB forum meeting scheduled for 10 September 2024;
7. RCB forum meeting scheduled for 12 November 2024; and
8. SARS National Operations meeting scheduled for 21 November 204.

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: February 2024

Month	Tax Type	Date	Notification
February 2024	Employment Taxes	07/02/2024	**EMP201** submissions and payments
	Value-Added Tax	23/02/2024	Manual **VAT201** submissions and payments
	Value-Added Tax	29/02/2024	Electronic **VAT201** submissions and payments
	Income Tax	29/02/2024	Submission of 2023 **ITR14** returns for companies with a February year-end
	Income Tax	29/02/2024	**2nd provisional (2024)** submissions and payments for individuals, trusts and companies with a February year-end
	Income Tax	29/02/2024	2024 closing odometer reading for logbook purposes
	Turnover Tax	29/02/2024	**2nd (2024)** payments for micro-businesses registered for turnover tax

SAIT member resources

- SAIT Important tax dates calendar – contains important dates from January 2024 to December 2024 (updated).
- SAIT SARS contact map – links service requirements to SARS channels (update made to the contact details for lodging a complaint with SARS).

Key Operational News

Deadline for the provisional tax and taxpayers registered for turnover tax approaching (reminder)

The end of the 2024 year of assessment for individuals and companies with a February year-end is on Thursday, 29 February 2024. As such, the second provisional tax returns, covering the period 1 March 2023 to 29 February 2024, are due. Affected individuals and companies are encouraged to submit their IRP6 returns on or before the due date to avoid penalties and interest.

For individual taxpayers, SAIT has prepared an advisory on provisional tax: *the requirements and implications*, to assist taxpayers and tax practitioners in the determination of their provisional tax status.

The 29 February 2024 due date is also relevant for the second turnover tax payment for micro-businesses registered for turnover tax. Taxpayers registered for turnover tax must complete and submit the TT02 – Payment Advice for Turnover Tax and make the payment at the bank or electronically using internet banking. When payments are made, it is essential that the 'Beneficiary ID' and 'Payment Reference Number' are quoted. The Payment Advice will assist with these and other matters relating to interim payments.

CIPC hard-stop functionality for Beneficial Ownership Filing

On 7 February 2024, the Companies and Intellectual Property Commission (CIPC) published notice 5 of 2024, announcing that as of 1 April 2024, the Commission will be introducing a hard-stop functionality that will prevent entities which have not complied with beneficial ownership filing requirement from completing the process of filing their annual returns. The Commission will also be taking further and necessary enforcement actions with regards to entities which continue to be non-compliant.

All entities on the CIPC registry need to have filed their beneficial ownership information by 24 May 2024 as this will be the anniversary date of publication of the amended Companies Regulations, which made the filing of beneficial ownership information mandatory.

Fixed percentage tax directives for the 2025 year of assessment (reminder)

1 March 2024 will be the beginning of the 2025 year of assessment and many commission earners, freelancers and personal service companies will need to finalise their fixed percentage tax directives. The fixed percentage directive is issued to commission earners and personal service companies and trusts, instructing tax to be deducted at a pre-determined set rate each month, irrespective of amount earned.

A set fixed percentage will help to 'normalise' tax payments across the full tax period and may alleviate a hefty tax liability at the end of a tax year.

Important to note regarding the fixed percentage tax directive:

- A tax directive is valid only for the tax year or period stated therein.
- Employers may under no circumstances deviate from the instructions of the directive.
- Employers must apply the percentage of employees' tax as indicated in the directive prior to taking into account allowable deductions for employees' tax purposes (e.g. pension, retirement annuity fund contributions, etc.). Where the employer received a directive and the employee's commission income is not more than 50% of the gross remuneration income, the employer can ignore the directive instruction.

Provisional Tax: Solar Energy Tax Incentive (reminder)

On 22 February 2023, the Minister of Finance announced the introduction of the solar energy tax incentive scheme, which would be available to individuals for a limited period between 1 March 2023 to 28 February 2024. This incentive scheme was made available to encourage households to invest in clean electricity generation capacity.
With the understanding that PAYE taxpayers would be able to claim the rebate on assessment during 2024 filing season and provisional taxpayers would be able to claim the rebate against provisional and final payments, SAIT wrote to SARS in August 2023 to find out when the 2024 IRP6 return would be updated to allow provisional taxpayers to claim the rebate when calculating the provisional payments. Unfortunately, by the due date of the first provisional payments on 31 August 2023, the IRP6 return had not been updated and individual provisional taxpayers were unable to rebate.

On 26 January 2024, SARS announced that the IRP6 return had officially been updated and individual provisional taxpayers could claim the solar energy tax incentive rebate on the second payment due on 29 February 2024. To this effect, a revised external guide on Provisional Tax was also published.

According to the guide, the second provisional tax payment would be calculated as follows:

	R
Estimated taxable income for the year of assessment	XXXXXXX
Normal tax on estimated taxable income	XXXXX
Less: Primary, secondary and tertiary rebates under section 6	(XXX)
Less: Tax credit for medical scheme fees under section 6A	(XXX)
Less: Additional medical expenses tax credit under section 6B	(XXX)
Less: Solar energy tax credit under section 6C Total Tax Payable	(XXX)
Less: Employees' tax deducted from the provisional taxpayer's remuneration during the year	(XXX)
Less: First provisional tax payment (if actually paid)	(XXX)
Less: Foreign tax credits (section 6quat) for the year	(XXX)
SECOND PROVISIONAL TAX PAYMENT	**XXXX**

This tax credit applies to any natural person who is liable for personal income tax and who invests in qualifying solar photovoltaic panels (solar PV panels).
Under section 6C of the Income Tax Act, No. 58 of 1962 (the Income Tax Act), a natural person may be eligible for the tax credit on the cost that has been actually incurred in respect of the acquisition of **qualifying solar PV panels**. The cost relating to other components of a complete solar energy system such as inverters, batteries and supporting structures **do not** qualify for the tax credit.

Other SARS and related operational publications and announcements

- **16 February 2024** – The SARS Complaints Management Office (CMO) contact number has changed to a toll-free number. The new CMO number is **0800 12 12 16** and not 0860 12 12 16 anymore. For more information on the complaints process, see the Lodge a complaint webpage.

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 15 – 21 February 2024.

Key tax practitioner news

Alberton Service Centre relocating to the Alberton Campus

The temporary Alberton branch office in the Alberton City Mall will be closing at 12:00 on Friday, 23 February 2024 and relocating to the Alberton campus for opening on Monday, 26 February 2024.

The new physical address from 26 February will be SARS Alberton campus,
St Austell street,
15 McKinnon Crescent,
New Redruth Shopping Village,
Alberton.

Government & Stakeholder Newsletters

No new Government & Stakeholder Newsletters were published for the week
15 – 21 February 2024.

Other Tax practitioner access and functionality publications and announcements

- **21 February 2024:** SARS has warned taxpayers of a scam called 'Assessment of tax Obligations Preventive Actions' sent via email with a subject line ' SARS tax review'. Inside the email is a QR code and members are encourage not to scan it or point your mobile device camera at it.
- **14 February 2024:** SARS announced that the eFiling system would be upgraded on Friday, 16 February 2024 from 18:00 – 21:00 and on Saturday, 17 February from 14:00 – 16:00. During this time, the digital platforms may have been unavailable.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy & international agreements

Highlights from the 2024 Budget Speech

The Budget Speech took place on 21 February 2024 before a sitting of the National Assembly at the Cape Town City Hall.

The Budget Speech presented an overall synopsis of the state of the country's finances, amendments to tax, spending plans for the upcoming fiscal year, distribution of revenue across spheres of government and distribution of expenditure across national departments.

Below are the tax related highlights of the Budget Speech:

- **Personal Income tax brackets, rebates and medical tax credits**

  Personal income tax brackets, rebates and medical credits remain unchanged for the year 2024/25.

- **Alcohol products and excise duties on alcoholic beverages and tobacco related products**

  There is an increase of between 6.7 and 7.2 per cent for alcohol products excise duties for 2024/25.There is an increase tobacco excise duties by 4.7% for cigarettes and cigarette tobacco, and by 8.2% for pipe tobacco and cigars. There is an increase of the excise duty on electronic nicotine and non-nicotine delivery systems to R3.04 per millilitre.

- **Carbon Tax**

  As of 1 January 2024, carbon tax increased from R159 to R190 per tonne of carbon dioxide equivalent. The carbon fuel levy will increase to 11 cents per litre for petrol and 4 cents per litre for diesel effective from 3 April 2024. The Climate Change Bill remains under consideration in Parliament.

- **Fuel Levy**

  There will be no increases to the general fuel levy or the Road Accident Fund Levy for 2024/25.

- **Two-pot retirement reform**

  From 1 September 2024, the first cash withdrawals can be made from the savings pot.

- **Global minimum corporate Tax**

  Multinational corporations with annual revenue exceeding 750 million euros will be subject to an effective tax rate of at least 15%, regardless of where their profits are generated.

- **Incentivising local electric vehicle production**

  Producers of electric vehicles in South Africa will be able to claim 150 per cent of qualifying investment spending as an incentive to aid the transition to new energy vehicles.

- **Learnership Tax Incentive Extension**

  The sunset date for section 12H learnership tax incentive will be extended by 3 years to 31 March 2027.

- **Plastic bag levy and incandescent globe taxes**

  There is an increase in the plastic bag leavy from 28c/bag to 32/bag from 1 April 2024. There is an increase in the incandescent light bulb levy from R15 to R20 per light bulb from 1 April 2024.

- **Motor vehicle emissions tax**

  There is an increase in motor vehicle emissions tax rate for passenger vehicles from R132 to R146 per gram of CO_2 emissions per kilometre and the tax rate for double cabs from R176 to R195 per gram of CO_2 emissions per kilometre from 1 April 2024.

Highlights from the 2024 State of the Nation Address (reminder)

President Cyril Ramaphosa delivered the State of the Nation Address (SONA) on Thursday, 8 February 2024 at 19:00. The address took place before a joint sitting of the two houses of Parliament and was nationally televised.

The President addressed topics relating to the celebration of 30 years of democracy, youth unemployment, the condition of state institutions and renewable energy to name a few in relation to the development of the country in the past years. Below are the highlights from the SONA:

SARS

The President stated that the credibility and efficiency of SARS has been restored and its performance through the appointment of capable leaders with integrity. The President highlighted how SARS has been able to collect R4.8 billion in unpaid taxes.

Renewable Energy

The President highlighted how a clear plan to end load shedding has been implemented through the National Energy Crisis Committee and has brought substantial new power through private investment on to the grid, which is already helping to reduce load shedding. He also touched on the implemented major debt relief package for Eskom.

Solar Incentives

Through tax incentives and financial support, the Government has more than doubled the amount of rooftop solar capacity installed across the country in just the past year and is confident that an end to loadshedding is near.

Furthermore, to ensure that the country never faces a similar crisis again, the Government is reforming SA's energy system to make it more competitive, sustainable and reliable by building new transmission lines and will enable private investment. Last year, the Electricity

Regulation Amendment Bill was tabled to support the restructuring of Eskom and establish a competitive electricity market.

National Health Insurance (NHI)

Government is working to improve both the quality of healthcare and equality of access to health care. The National Health Insurance aims to provide free health care at the point of care for all South Africans, whether in public or private health facilities. The NHI shall be implemented incrementally.

LEGISLATIVE INTERPRETATION

Calls for comment submitted (reminder)

Draft guide on the Solar Energy Tax Credit provided under Section 6C

On 26 January 2024, SARS released the draft guide for the Solar Energy Tax Credit (draft guide) provided for under section 6C of the Income Tax Act 1962 (the Act) for public comment.

Section 6C of the Act has been introduced to alleviate the pressure on the national grid and to improve energy efficiency in South Africa. Accordingly, the draft guide aims to provide general guidance on the newly introduced Solar Energy Tax Credit. It lists amongst other things, the requirements of section 6C, the persons eligible for the Solar Tax Credit and the validity period for the Solar Energy Tax Credit.

In analysing the draft guide, SAIT Tax Technical team and select members of the Personal and Employment Workgroup highlighted three areas of concern. The first area of concern is the confusion created by the draft guide in relation to when the 'acquisition' of the solar panels needs to have taken place. The second area of concern is an example incorporated in the guide that implies that only 'co- homeowners' and spouses are allowed to split the Solar Energy Tax Credit. Our last concern was in relation to how to satisfy the electrical certificate of compliance requirement where there are multiple acquirers of the solar panels.

The submission was made to SARS on 8 February 2024 and the full submission may be accessed, here.

Legislative interpretation calls for comment

On 16 February 2024, SARS issued the following call for comment:

- Draft Interpretation Note - Consequences of an employer's failure to deduct or withhold employees' tax.

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

Legislative counsel publications

On 15 February 2024, SARS uploaded the synthesised texts to the Multilateral Instrument (MLI). The synthesised texts are in relation to our covered tax agreement with Australia.

A synthesised text represents the following in a single document:

- The text of the Covered Tax Agreement that is modified by the MLI, including the text of amending protocols (where relevant).

- The provisions of the MLI that have an effect on the tax treaty as a result of the interaction of the MLI positions of the jurisdictions, and
- The dates on which the provisions of the MLI take effect for the specific Covered Tax Agreement

Synthesised texts are aimed at facilitating the understanding of the application of the MLI to a particular tax treaty. However, it should be noted that a synthesised text does not constitute a source of law. The authentic legal texts of the tax treaty and the MLI take precedence and remain the legal texts applicable.

The MLI synthesised text for Australia may be accessed here.

Court cases published (reminder)

On 13 February 2024, SARS published the following Tax Court judgment:

Date of delivery	Case	Applicable legislation
17/01/2024	*VAT 22402*	Value-Added Tax Act, 1991
Summary: The 'ratio' of goods and services a vendor intends to use for taxable compared to other uses: Whether and how the Head Lease should be factored into the taxpayer's section 17(1) apportionment ratio.		

Other SARS publications and announcements

No other SARS publications and announcements were made for the period 15 – 21 February 2024.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

SARS hosted a webinar on Digital Channels

SARS hosted a webinar on digital channels which aims to increase the uptake of digital migration and encourage those who are already registered to utilise the channel by providing education to SMMEs on these channels.

The webinar recording may be accessed on YouTube