

# TAX PRACTICE

## WEEKLY HIGHLIGHTS

WEEK OF 22 - 28 February 2024  
(Issue 7 -2024)

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### TOP STORIES

#### SARS' debt collection drive starts early in fear of revenue collection deficit

31 March 2024 will see the end of SARS' 2023/24 financial year.

During his budget speech on 21 February 2024, Finance Minister, Mr Enoch Godongwana, attributed the deterioration of tax revenue collection for the 2023/24 financial year to the weak economic performance. As it stands, the tax revenue collection stands at R1.73 trillion, R56.1 billion lower than the amount estimated in the 2023 budget.

SARS has expanded the tax register, improved on debt collections, and successfully reduced fraudulent refunds. Notwithstanding, over the next month, it is anticipated that SARS will be undertaking more aggressive tax collection strategies to maximise revenue collection and ensure that the 2023/24 revenue targets are met.

For more information on the mechanisms SARS may use to collect revenue, read [here](#).

#### SARS sharpens its tooth on trust tax compliance

Over the past year, there has been increased focus on the Trust Modernisation Programme, South Africa's grey-listing by FATF, and Beneficial Ownership.

To this end, SARS will be hosting a webinar on Trust and Tax Compliance to help trust taxpayers fulfil their tax obligations and remain tax compliant. The webinar aims to:

- Convey the compliance requirements across the trust value chain, namely registration, filing, declaration, and payment;
- Educate trust taxpayers on requirements that are not clear; and
- Ultimately see improvements in Trust Tax Compliance across the trust value chain.

For more on the webinar details, see [below](#).

[#StayAbreastOfTheTaxWave](#)

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Approximately 500 – 600 words

## MEMBERS' DIGEST

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

Written by: : Ororiseng Maema,  
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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<sup>1</sup>. On the other hand, tax evasion involves the use of illegal means by taxpayers to free themselves from a tax burden<sup>2</sup>.

The court in *Commissioner for South African Revenue Service v NWK Ltd*<sup>3</sup> 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<sup>4</sup>.

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<sup>5</sup>.

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<sup>6</sup>, as well as the evasion of tax with intent, are criminal offences and are subject to severe penalties<sup>7</sup>.

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.

<sup>1</sup> M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135

<sup>2</sup> M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1136

<sup>3</sup> [27/10] [2010] ZASCA 168; 2011 (2) SA 67 (SCA) ; [2011] 2 All SA 347 (SCA) (1 December 2010)

<sup>4</sup> 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)

<sup>5</sup> M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1136

<sup>6</sup> 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

<sup>7</sup> 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<sup>8</sup>. 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<sup>9</sup>;
- depending on whether the arrangement is "*in the context of 'business', or 'in a context other than business'*".<sup>10</sup>

('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.<sup>11</sup>

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.

<sup>12</sup>

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;<sup>13</sup>
- **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.<sup>14</sup>; 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.<sup>15</sup>

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

<sup>8</sup> M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135

<sup>9</sup> The tainting elements are discussed from paragraph 18 below

<sup>10</sup> M Stiglingh (editor), AD Koekemoer & L Van Heerden et al SILKE: South African Income Tax 2022 (2021) 1135

<sup>11</sup> Section 80A of the Income Tax Act 58 of 1962

<sup>12</sup> Section 80G of the Income Tax Act 58 of 1962

<sup>13</sup> Section 80C (1) of the Income Tax Act 58 of 1962

<sup>14</sup> Section 80D (1) of the Income Tax Act 58 of 1962

<sup>15</sup> 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.<sup>16</sup>

### **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<sup>17</sup>, 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!

<sup>16</sup> Section 80F of the Income Tax Act 58 of 1962

<sup>17</sup> 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).

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.

On Friday, 23 February 2024, SAIT and other recognised controlling bodies (RCBs) met with senior SARS officials to discuss this issue and submissions made. SARS confirmed that physical (walk in) appointments for tax practitioners has been limited to three provinces, namely, Western Cape, Eastern Cape and Kwa Zulu-Natal due to capacity constraints within the SARS branches. SARS further stated that tax practitioners in the other provinces ought to utilise the digital channels and virtual appointments (telephonic and video appointments).

Unfortunately, in some cases, the eBooking system does not allow a tax practitioner to book virtual appointments and will only accept a physical appointment. This particular system error was demonstrated to SARS and the officials requested some additional examples to investigate where the problem may be.

Members who still struggle with booking appointments on the SARS eBooking system are requested to share the following information with us to allow SARS to investigate and resolve the problem swiftly.

| Tax Practitioner Number | ID number linked to Tax Practitioner number | Company/ Trust registration number | Trust entity (as applicable) | Income tax number |
|-------------------------|---|------------------------------------|------------------------------|-------------------|
|-------------------------|---|------------------------------------|------------------------------|-------------------|

The information may be sent to [taxqueries@thesait.org.za](mailto:taxqueries@thesait.org.za). We guarantee that the information will be treated with the utmost confidentiality and will only be shared with SARS in an effort to resolve these issues.

#### 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.

\*Although a system fix was deployed during the week ended on 16 February 2024, upon further testing of the system, the data saving problem persists. In some instances, the taxpayer or tax practitioner is required to complete the return upwards of five times before the return can be submitted.

SARS, at regional and national level have been alerted and are aware of this issue. With the annual tax returns for companies with a February year end due, members are encouraged to keep evidence of any system errors preventing the submission of returns. This may be useful in the event where penalties are levied for late submission and a request for remission must be submitted.

## 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).

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

Feedback from the following regional meeting is available:

1. [Eastern Cape](#) held on 21 February 2024;
2. [Gauteng North](#) held on 22 February 2024;
3. [Mpumalanga](#) held on 23 February 2024; and
4. [North West](#) held on 26 February 2024.

## Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Emalahleni, Mpumalanga for 29 February 2024;
2. Western Cape for 6 March 2024;
3. KwaZulu-Natal for 11 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 forum meeting scheduled for 5 March 2024;
2. SARS National Operations meeting scheduled for 18 April 2024;
3. RCB forum meeting scheduled for 4 June 2024;
4. SARS National Operations meeting scheduled for 25 July 2024;
5. RCB forum meeting scheduled for 10 September 2024;
6. RCB forum meeting scheduled for 12 November 2024; and
7. 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: February 2024

| Month            | Date       | Tax Type         | Notification  |
|------------------|------------|------------------|---|
| February<br>2024 | 07/02/2024 | Employment Taxes | <b>EMP201</b> submissions and payments  |
|                  | 23/02/2024 | Value-Added Tax  | Manual <b>VAT201</b> submissions and payments   |
|                  | 29/02/2024 | Value-Added Tax  | Electronic <b>VAT201</b> submissions and payments   |
|                  | 29/02/2024 | Income Tax       | Submission of 2023 <b>ITR14</b> returns for companies with a February year-end  |
|                  | 29/02/2024 | Income Tax       | <b>2nd provisional (2024)</b> submissions and payments for individuals, trusts and companies with a February year-end |
|                  | 29/02/2024 | Income Tax       | 2024 closing odometer reading for logbook purposes  |
|                  | 29/02/2024 | Turnover Tax     | <b>2nd (2024)</b> payments for micro-businesses registered for turnover tax   |
| March<br>2024    | 07/03/2024 | Employment Taxes | <b>EMP201</b> - Submissions and payments  |
|                  | 25/03/2024 | Value-Added Tax  | <b>VAT201</b> - Manual submissions and payments   |
|                  | 29/03/2024 | 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 December 2024 (unchanged).
- [SAIT SARS contact map](#) – links service requirements to SARS channels (update made to the contact details for lodging a complaint with SARS).



### **SARS' debt collection drive starts early in fear of revenue collection deficit**

31 March 2024 will see the end of SARS' 2023/24 financial year.

During his budget speech on 21 February 2024, Finance Minister, Mr Enoch Godongwana, attributed the deterioration of tax revenue collection for the 2023/24 financial year to the country's weak economic performance. As it stands, the tax revenue collection stands at R1.73 trillion, R56.1 billion lower than the amount estimated in the 2023 budget.

SARS has expanded the tax register, improved on debt collections, and successfully reduced fraudulent refunds. Notwithstanding, over the next month, it is anticipated that SARS will be undertaking more aggressive tax collection strategies to maximise revenue collection and ensure that the 2023/24 revenue targets are met.

Amongst others, some of the collection steps that SARS may utilise are:

- Issuing notices for final demand;
- Issuing third-party appointments;
- Issuing a judgement and having a taxpayer blacklisted with the credit bureau;
- Attaching and selling assets through a writ of execution; and/or
- Obtaining a preservation order in respect of a taxpayer's assets.

A taxpayer that is not able to settle a tax debt in full by the payment date, may mitigate against these steps available to SARS by utilising the following steps:

- Request for the suspension of payment if the debt is under dispute;
- Request a deferral payment arrangement to pay the debt in instalments; and/or
- Request a debt compromise if the criteria is met.

### **Tax Directive system enhancements implemented (February 2024)**

On 26 February 2024, SARS enhanced the Tax Directives system in line with legislative and system requirements. The following changes to the Tax Directives process will affect external stakeholders:

- Taxation of local and foreign income will now cater for South African citizens who earned income both locally and abroad in one Year of Assessment, but who do not qualify for 10(i)(o)(ii).
- Free portability between funds, such as with transfers to unclaimed benefit funds:
  - The provisions of the Income Tax Act confirm that a deduction equal to the value of the amount transferred will be allowed as a deduction for any transfer from a pension fund and pension preservation fund (including an unclaimed-benefit pension preservation fund).
  - This means that the transfer will be tax neutral.

- The update to the directives system will allow the 'Transfer – Unclaimed Benefits' (code 48) to account for transfers between pension, preservation, and provident funds, and unclaimed-benefit funds of each type.
- Free portability between funds: the following fund types will be added to the eFiling RT01 screen drop-down menu:
  - Unclaimed Pension Preservation Fund.
  - Unclaimed Provident Preservation Fund.

Additionally, the tax directive guides have been updated to include the abovementioned changes:

- [Completion Guide for IRP3\(a\) and IRP3\(s\) Forms – External Guide](#)
- [Guide to Complete Submit and Cancel a Recognition of Transfer – External Guide](#)

## Other SARS and related operational publications and announcements

No other SARS and related operational announcements were made for the week of 22 – 28 February 2024.

## 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 22 – 28 February 2024.

## Key tax practitioner news

### Alberton Service Centre relocation to the Alberton Campus (reminder)

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

### Lasts Tax Practitioner Connect Newsletter now out

On 22 February 2024, SARS published Issue 49 of the [Tax Practitioner Connect Newsletter](#) (February 2024). The latest edition of the newsletter highlighted the following matters:

- Solar energy tax credit. For further information refer to the following publications:
  - ✓ [Legal-Pub-FAQs-IT04 – 2023 Budget FAQs – Solar Panel Tax Incentive for Individuals.](#)
  - ✓ [GEN-PT-01-G01 – Guide for Provisional Tax – External Guide.](#)
  - ✓ [Legal-LPrep-Drafts-2024-02 – Draft Guide – Solar energy tax credit provided under section 6C.](#)

- Recognition of controlling bodies (RCBs) and registration of tax practitioners. For further information refer to the following publication:
  - ✓ [GEN-GEN-21-G01 – Criteria for the Registration of Tax Practitioners and the Recognition of Controlling Bodies – External Guide](#)
- VAT enhancements for estimated assessments. For further information refer to the following publications:
  - ✓ [GEN-PEN-05-G02 – Guide to submit a Dispute via eFiling – External Guide](#)
  - ✓ [GEN-ELEC-04-G01 – Guide to completing the Value Added Tax VAT201 Declaration – External Guide](#)
- Local assets at market value declared on the ITR12 return. For further information refer to the following publications:
  - ✓ [IT-AE-36-G05 – Comprehensive Guide to the ITR12 Income Tax Return for Individuals – External Guide \(see page 116\)](#)
  - ✓ [IT-AE-36-G06 – Guide to submit your Individual Income Tax Return via eFiling – External Guide](#)

## Other Tax practitioner access and functionality publications and announcements

- **22 February 2024:** SARS announced that the eFiling system would be upgraded on Friday, 23 February 2024 from 18:00 – 22:00. 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 in 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.

In addition to this, the minister also released the additional tax policy and administrative adjustment proposals (Annexure C proposals).

Below is a short summary of some of the responses provided by National Treasury to the submission made by the SAIT Technical Work Groups.

#### Annexure C VAT WG 2023 Value Added Tax Act, 1991 (VAT Act)

##### **Foreign lessors of aircraft engines who are registered vendors -Sections 8 and 10**

Gain access to the SAIT submissions [here](#). See item 3.

##### **SAIT VAT Work Group Proposal**

It is proposed that a further deeming provision in section 8 be introduced in terms of which foreign lessors of aircraft engines who satisfy the provisions envisaged in paragraphs (aa) and (bb) of proviso (xiii) to the definition of 'enterprise' are, upon election, deemed to supply the engine in terms of a sale agreement in the course of its enterprise, provided the lessor obtains and retains documentary proof that VAT was paid upon the original importation and, that such VAT was claimed as input tax either by the vendor or the lessee. In addition, it is proposed that a further subsection to section 10 be introduced which deems the value of the said deemed taxable supply to be nil.

##### **Budget Annexure C adjustment:**

Previously, foreign lessors of parts of ships, aircraft or rolling stock were required to register for VAT because they were not covered under the proviso (xiii) exclusion in the definition of 'enterprise' in section 1(1) of the VAT Act. However, the addition in 2023 of the words 'or parts directly in connection thereto' to proviso (xiii) implied that foreign lessors were now required to deregister. This amendment had the unintended consequence of such vendors now facing an output tax liability under section 8(2). It is proposed that the VAT Act be amended to provide relief from this unintended consequence.

[Refer to page 137 of the National Treasury Budget Review]

**Beneficial Ownership**

Gain access to the SAIT submission [here](#). Item 4.

**SAIT Corporate Work Group Proposal**

An insertion be made in the TAA to clarify at which point a person will be regarded as a beneficial owner in relation to shares.

**Budget Annexure C adjustment:**

Extending exclusions to the ownership requirement

It is proposed that the ownership requirement exclusions be extended to include corporate actions relating to listed share substitutions on a recognised exchange in a country other than South Africa. In addition, the ownership requirement exclusions will apply if the equity shares in the operating company are disposed of, and the funds derived from that disposal are used to redeem the preference share within 90 days of the disposal. It has come to government's attention that further clarity is required on whether settlement of any dividends, foreign dividends or interest accrued from that preference share which are payable also falls within the ambit of its allowable redemption. It is proposed that the legislation be amended to include the settlement of any amounts of dividends, foreign dividends or interest accrued in respect of the redemption of a preference share.

[Refer to page 134 of the National Treasury Budget Review]

**Asset-For-Share Transactions**

Gain access to the SAIT submission [here](#). See item 2.

**SAIT Corporate Work Group Proposal**

An amendment to clarify that section 42(6) will not be triggered if a further asset-for-share or amalgamation transaction is entered into and the qualifying interest requirement is fulfilled via the new shareholding.

**Budget Annexure C adjustment:**

Reviewing the prohibition against transfers of assets to non-taxable transferees in terms of an 'Amalgamation transaction'

In general, 'amalgamation transaction' rules do not apply if assets are transferred to companies that are wholly or partially exempt or fall outside the South African tax base because they are not fully taxable, in order to ensure that rollover relief is not used to obtain a permanent exemption. It has come to government's attention that the interaction between the definition of 'amalgamation transaction' and the aforementioned rule, its reference to an 'amalgamated company' and cross references to a resultant company that is a foreign company that does not have a place of effective management in South Africa seem to be misaligned and unclear. It is proposed that this interaction be reviewed and clarified.

[Refer to page 133 of the National Treasury Budget Review]

## **Section 24I And Section 20 Of The ITA**

Gain access to the SAIT [here](#). See item 3.

### **SAIT Corporate Work Group Proposal:**

The provisions of section 20 be amended to allow (on a per instrument basis) the carry forward of losses arising on exchange items in circumstances where section 20 would not otherwise allow the carry forward of such losses (embedded in the assessed loss).

### **Budget Annexure C adjustment:**

Refining the definition of 'exchange item' for determining exchange differences

Certain financial arrangements that include preference shares are eroding the tax base due to a mismatch because some elements of the arrangement result in an exchange loss for tax purposes, while gains on the preference shares are not being taken into account for tax purposes. Government proposes to address the tax leakage associated with these financial arrangements by extending the definition of 'exchange item' to include shares that are disclosed as financial assets for purposes of financial reporting in terms of IFRS.

## **Annexure C Corporate Tax WG 2022 Income Tax Act, 1962 (Income Tax Act)**

## **Section 8G – Contributed Tax Capital Restriction**

Gain access to the SAIT submission [here](#). See item 13.

### **SAIT Corporate Work Group Proposal:**

The legislation be amended to apply only to transactions that result in the transfer by the subscribing company (a non-resident company) of shares held within the group in a resident company (the target company) forming part of the same group of companies as the subscribing company to another resident company forming part of the same group of companies as the subscribing company before or after the transfer (the issuing company) where shares are issued directly or indirectly to facilitate such a transaction.

The latter amendment should then ensure that normal financing transactions are not adversely impacted by the anti-avoidance provisions.

### **Budget Annexure C adjustment:**

Effect on legitimate transactions due to 'contributed tax capital' anti-avoidance measures.

Section 8G of the Income Tax Act is an anti-avoidance measure that limits the 'contributed tax capital' of a resident company in a share-for-share transaction with a non-resident group company. The taxation consequences of this anti-avoidance measure may affect legitimate corporate finance practices and limit South Africa's attractiveness as an investment destination. Government proposes that further refinements be considered to minimise any inadvertent tax consequences.

[Refer to page 135 of the National Treasury Budget Review]

**Clarifying anti-avoidance rules for low-interest or interest-free loans to trusts**

[Applicable provisions: Section 7C of the Act]

Gain access to the SAIT submission [here](#). See item 1.

**SAIT Work Group Proposal**

We propose that on a similar basis as section 25D, the average exchange rate over the relevant year of assessment be applied to address any anomalies that may arise between the potentially overlapping legislative provisions. Further, to ensure a degree of parity.

**Budget Annexure C adjustment:**

The Income Tax Act contains an anti-avoidance measure aimed at curbing the tax-free transfer of wealth to trusts using low-interest or interest-free loans, advances or credit arrangements (including cross-border loan arrangements). The transfer pricing rules in the act also apply to counter the mispricing of cross-border loan arrangements. To avoid the possibility of an overlap or double taxation, the trust anti-avoidance measures specifically exclude low- or no-interest loan arrangements that are subject to the transfer pricing rules. It has come to government's attention that the above-mentioned exclusion does not effectively address the interaction between the trust anti-avoidance measures and transfer pricing rules where the arm's length interest rate is less than the official rate on these cross-border loan arrangements. It is proposed that amendments be made to the legislation to provide clarity in this regard.

[Refer to page 131 of the National Treasury Budget Review]

**Transfers between retirement funds by members who are 55 years or older.**

Gain access to the SAIT submission [here](#) See item 3.

**SAIT Work Group Proposal**

It is noted that the EM refers to 'involuntary transfers', whilst the proposed amendment does not mention this. Clarity is sought for the insertion of the distinction between voluntary and involuntary transfers, and whether it is necessary to include such, as opposed to simply referencing 'transfers'. Clarity is further sought on the interaction between this proposed amendment and the "two pot retirement system".

**Budget Annexure C Adjustment:**

In 2023, changes were made to the legislation to allow for tax-neutral transfers between retirement funds in instances where members of pension or provident funds who have reached the normal retirement age as contained in the rules of the fund, but have not yet elected to retire, to transfer their retirement interest tax-free if it is an involuntary transfer. However, to be tax-free the transfer of the retirement interest should be made to a fund that is not less restrictive. It has come to government's attention that the law only allows certain tax-free transfers of an involuntary nature but excludes transfers from one retirement annuity fund to another. It is proposed that the law be amended to allow involuntary transfers of this nature.

[Refer to page 132 of the National Treasury Budget Review]

## Other important topics not in SAIT Annexure C but mentioned in TAA 2024 Wishlist

### Alternative dispute resolution proceedings

In terms of the Tax Administration Act and the rules issued under the act, alternative dispute resolution proceedings can only be accessed at the appeal stage of a tax dispute, where they are responsible for the resolution of most appeals. It is proposed that SARS review the dispute resolution process to improve its efficiency, which may include allowing alternative dispute resolution proceedings at the objection phase of a tax dispute.

### Prescription period for input tax claims

To ease the administrative burden on both taxpayers and SARS, it is proposed that the VAT Act be amended in relation to the tax period in which past unclaimed input tax credits may be claimed. To ensure ease of audit functions and clarity of returns in this regard, it is also proposed that the Act be amended to clarify this.

## Legislation

### 2024 Draft Bills and Explanatory Memorandums

On 21 February 2024, SARS published the following 2024 Draft Tax Bills and Draft Global Minimum Tax Bills together with their Explanatory Memorandums:

| Bills and Explanatory Memorandums   |
|---|
| <a href="#">Draft Revenue Laws Amendment Bill 2024</a> together with its <a href="#">Draft Explanatory Memorandum RLAB</a>                        |
| <a href="#">Draft Global Minimum Tax Bill 2024</a> together with its <a href="#">Draft Explanatory Memorandum on Global Minimum Tax Bill,2024</a> |
| <a href="#">Global Minimum Tax Administration Bill 2024</a>   |
| <a href="#">Draft Rates and Monetary Amounts Bill 2024</a>  |

Government has released the *Government Gazette* publication details for the following Income Tax Notices:

| Notice                     | Description  | Implementation Date |
|----------------------------|--|---------------------|
| <a href="#">*GG Notice</a> | Fixing of rate per kilometre in respect of motor vehicles – section 8(1)(b)(ii) and (iii)  | 1 March 2024        |
| <a href="#">*GG Notice</a> | Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)(ii) (overnight allowance) |                     |
|                            | Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(a)(ii) (daily allowance)     |                     |

\*Publication details of these Notices will be made available as soon as these notices are gazetted.

## LEGISLATIVE INTERPRETATION

### Calls for comment submitted

No calls for comment were submitted for the week 22 – 28 February 2024.



## Legislative interpretation calls for comment

SARS and National Treasury issued the following calls for comment:

- [Draft Interpretation Note](#) - Consequences of an employer's failure to deduct or withhold employees' tax.
- [Draft Revenue Laws Amendment Bill, 2024](#) - is aimed largely at clarifying the existing language and to simplify the directives system for both administrators and SARS to allow for an efficient implementation of the 'two-pot' retirement reform.
- [Draft Global Minimum Tax Bill, 2024](#) - is aimed at implementing the GloBE Model Rules in South Africa to enable South Africa to impose a multinational top-up tax at a rate of 15 per cent on the profits of in-scope multinational enterprise groups.
- [Global Minimum Tax Administration Bill, 2024](#) - is aimed at the administration of the Draft Global Minimum Tax Bill.
- [Draft Rates and Monetary Amounts Bill, 2024](#)

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

## Legislative counsel publications

On 22 February 2024, SARS published [Binding Class Ruling 088: En commandite partners investing in solar assets \(BCR 088\)](#).

BCR 088 determines the deductibility of expenditure to be incurred, and the limitation of any allowance and deductions claimed by *en commandite* partners investing in photovoltaic solar energy assets to be owned by the *en commandite* partnerships which will be installed at clients' premises in terms of power purchase agreements (PPAs).

The parties to the transaction as outlined in BCR 088 are, a resident company which will be the general partner in multiple *en commandite* partnerships (the Applicant) and the resident individuals, trusts or companies who will be the *en commandite* partners (The class).

The ruling made in connection with the proposed transaction is as follows:

- Under section 24H(2) each class member is deemed to carry on the trade of the partnership.
- Under section 24H(5)(a) a class member's portion of the partnership's income must be included in such class member's income in the relevant year of assessment.
- A class member is entitled to deduct its proportionate share of the partnership's deductions and allowances allowable under the Act in the determination of the class member's taxable income. Subject to section 12B(4), this will include a proportionate share of the allowances under section 12B in respect of the generation assets mentioned in 5, previously not owned or used by the class member, that the partnership brings into use for the purpose of its trade.
- The generation assets mentioned in 5, that are brought into use and used in the partnership's trade to generate electricity will meet the requirements of section 12B(1)(h)(ii) and will therefore qualify for the allowance as contemplated in section 12B(1)(h) read with section 12B(2).
- Under section 24H(3), in any year of assessment, the aggregate allowances and deductions that a class member may deduct in respect of or in connection with the trade carried on by the partnership, may not exceed the sum of the amount for which the class member may be held liable to any creditor (which includes the capital contribution to the partnership) and the cumulative portion of the partnership income included in the class member's income in the current and any previous years of assessment.

- f. Subject to section 20A, a class member may set off an assessed loss arising from the partnership's trade, determined after the application of section 24H(3), against income from carrying on any other trade during the same year of assessment under section 20(1)(b). Subject to section 20A, a class member who is not a company, may set off an assessed loss arising from the partnership's trade, determined after the application of section 24H(3), against income otherwise than from carrying on a trade under section 20(2A)(a). The assessed loss may not be set off against any amount from a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit included in taxable income. Any assessed loss or balance of assessed loss from carrying on a trade outside the Republic may not be set off against any amount derived from the partnership trade carried on in the Republic.
- g. When a class member disposes of all or part of its interest in the partnership, the class member must recoup any allowances claimed under section 12B(1)(h) and account for any capital gain or loss in respect of the decrease in its proportionate interest in the partnership assets on such disposal.
- h. A new class member may claim section 12B(1)(h) allowances in respect of its proportionate interest in the partnership assets acquired, provided that the new class member is acquiring and bringing such assets into use for the first time.

Members are encouraged to consult [BCR 088](#) for full details relating to the proposed transaction.

## Court cases published

No court cases were published for the week 22- 28 February 2024.

## Other SARS publications and announcements

No other SARS publications and announcements were made for the of 22 – 28 February 2024.

## OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

### SARS sharpens its tooth on trust tax compliance

SARS will be hosting a webinar on Trust and Tax Compliance to help Trust taxpayers fulfil their tax obligations and remain tax compliant. The webinar aims to:

- Convey the compliance requirements across the Trust value chain, namely registration, filing, declaration, and payment,
- Educate Trust taxpayers on requirements that are not clear; and
- Ultimately see improvements in Trust Tax compliance across the Trust value chain.

**Topic:** Trusts and Tax Compliance  
**Date:** Thursday, 29th of February 2024  
**Time:** 17:00 – 19:00  
**Platforms:** [YouTube](#)