

# TAX PRACTICE

## WEEKLY HIGHLIGHTS

WEEK OF 29 Feb - 06 Mar 2024  
(Issue 8 -2024)

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### TOP STORIES

#### SAIT presents to the Standing and Select Committee of Finance

The SAIT Tax Technical team made representation at the public hearings that were convened by the Standing and Select Committee on Finance as pertaining to the National Budget, 2024.

Whilst we appreciate National Treasury's need to devise a budget of austerity and clear measures to raise additional revenue for government identified expenditure, SAIT submits that to further experiment with taxes in response thereto is an inadequate solution to the insurmountable fiscal constraints and challenges that are being encountered by South Africa.

Members may access the full submission presentation [here](#). Further detailed may be accessed [below](#).

#### SARS submits that SA banks have a duty to report questionable transactions

In a recent statement, the Commissioner of the South African Revenue Service (SARS) declared that SARS is willing to go to court to reiterate South African banks' duty to report questionable transactions made by their clients.

The Financial Intelligence Centre Act requires banks to report certain transactions if they suspect they may be questionable. According to the Commissioner, the banks cannot plead ignorance or deny this responsibility but must manage this duty from a "risk to the entire financial ecosystem" perspective.

The Commissioner's comments come after SARS served a bank with a civil summons in the form of a damages claim. The outcome of this case is awaited with great interest.

#### Concerns raised after the CIPC data hacking

South Africa's Companies and Intellectual Property Commission (CIPC) is adopting a new customer verification process as part of its damage control after having its systems hacked where personal information of its clients and employees were exposed.

The CIPC urged clients to be vigilant in the monitoring of credit card transactions and to only approve/authorise known and valid transaction requests.

The extent of the exposure is being investigated and will be communicated as soon as possible.

For more information on the new customer verification process, read [here](#).

[#StayAbreastOfTheTaxWave](#)

# Are you a **tax practitioner** with a passion for writing?

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

Send your article to  
[taxqueries@thesait.org.za](mailto:taxqueries@thesait.org.za).

Approximately 500 – 600 words

# 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 (reminder)

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
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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 (reminder)

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

Feedback from the RCB/SARS regional and national meetings

Feedback from the following regional meeting is available:

1. [Emalahleni, Mpumalanga](#) held on 29 February 2024

## Upcoming RCB/SARS regional and national meetings

The following regional and national meetings have been scheduled:

1. Western Cape for 6 March 2024;
2. KwaZulu-Natal for 11 March 2024;
3. Free State and Northern Cape for 11 March 2024;
4. Gauteng South for 10 April 2024;
5. Gauteng North for 23 May 2024;
6. Free State and Northern Cape for 10 June 2024;
7. Gauteng South for 17 July 2024;
8. Gauteng North for 22 August 2024;
9. Free State and Northern Cape for 9 September 2024;
10. Free State and Northern Cape for 11 November 2024;
11. Gauteng South for 13 November 2024; and
12. 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: March 2024

Month	Date	Tax Type	Notification
March 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).

### Key Operational News

#### Concerns raised after the CIPC data hacking

South Africa's Companies and Intellectual Property Commission (CIPC) is adopting a new customer verification process as part of its damage control after having its systems hacked where personal information of its clients and employees were exposed.

The CIPC urged clients to be vigilant in the monitoring of credit card transactions and to only approve/authorise known and valid transaction requests.

The CIPC new customer verification process entails the following:

#### A. Clients with a South African ID number

1. Customers will log in using existing credentials on existing platforms.
2. Upon logging in, customers will be presented with a verification page. Customers must provide all necessary information which is mandatory.
3. Once all provided information is verified, a password reset page will be presented, and they will be required to update their password.
  - Follow the instructions for 'password minimum requirements'.
  - In instances where customers need to update their contact details, follow 'update contact details process'.
4. When customers input the new password and confirm new password, click on update.

5. An email link will be sent to the email address as listed by the customer for verification.
6. Click the link to verify.
7. Upon successful verification, clients will now be able to log in.

## **B. Foreign Nationals – (passport numbers)**

1. Customers will log in using existing credentials on the existing platforms.
2. Upon logging in, customers will be presented with a verification page. Customers must:
  - Provide all necessary information, which is mandatory and click verify.
  - Follow the instructions for 'password minimum requirements'.
  - In instances where customers need to update their contact details, follow the 'update contact details process'.
  - Once all provided information is verified and successful, a password reset page will be provided to update the password.
3. If there is no record of passport details on the CIPC's database, customers will be provided with a link to update passport details on the Foreigner Assurance process.
4. Once approved, they will be able to return after **48 hours** and then follow Step 2 above.
5. An email link will be sent to the email address as listed by the customer for verification.
6. Click the link to verify.
7. Upon successful verification, clients will now be able to log in.

## **Ghost exports: Diesel refunds**

On 4 March 2024 the Commissioner for the South African Revenue Service (SARS) welcomed the High Court decision to dismiss an application for leave to appeal to review the Commissioner's decision to refuse a diesel refund claim.

The taxpayer did not qualify for refunds in respect of duty paid on fuel exported as the taxpayer:

- could not prove that the fuel was exported, nor
- could it identify the consignee who received the export delivery.

The Commissioner expressed his satisfaction that the court provided legal certainty and clarity on how SARS should deal with ghost exports.

## **SARS gears up for early debt collection drive in light of fear over 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](#); and
- [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 29 February – 6 March 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 29 February – 6 March 2024.

## Key tax practitioner news

No other key tax practitioner news were available for the period 29 February – 6 March 2024.

## 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

- **29 February 2024:** SARS released the [mobile tax unit](#) schedules for the Western Cape for the month of March 2024.



# PART B – LEGISLATION & POLICY

## LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

### Tax policy stakeholder engagement

#### SAIT presents to the Standing and Select Committee of Finance

On 28 February 2024, the SAIT Tax Technical team made representations to the Standing and Select Committee on Finance regarding the proposals put forward by National Treasury in the National Budget, 2024.

Pertinent representations were made on the following aspects:

- In previous times, SAIT has submitted to the above Committees that South Africans are at the ‘fiscal cliff’ so to say with regards to taxation, essentially there is **little room to increase taxes as a measure of raising revenue**. Alongside the fact that levying more taxes is not the sole solution to alleviating fiscal pressures, the lack of inflationary adjustments to tax brackets – which *prima facie* are said to raise significant revenue will in effect place taxpayers in a financially compromising position because of the propensity for ‘bracket creep’. Thus, taxpayers will eventually pay more tax on their personal income.
- Another matter that was raised is regarding the **lack of adjustments to tax thresholds**. Tax thresholds should, in theory, provide some relief for taxpayers. However, many of these tax thresholds have not been adjusted in several years. *Inter alia*, the CGT estate exemption, CGT annual exclusion, interest exemption, estate duty, foreign employment income tax exemption have either remained largely unchanged for many years or have been increased in modest increments. Increases in taxation collected from taxpayers whilst not adjusting tax exemption thresholds, effectively prejudices taxpayers – and in so doing are not in itself an optimal solution to increasing tax collection and raising additional revenue for the fiscus.
- Another initiative that has been identified to increase revenue has been pinned to be the implementation of the ‘Pillar Two’ rules. Whilst we appreciate the implementation of the Pillar Two rules as pertaining to the Global Minimum tax, our representations questioned from whom the projected R8 billion would be collected from. On the basis that a number of multinational companies already operate offshore, thus it is our understanding that circa 9 South African multinational companies will actually be impacted by this legislation. While noble in effort as a means of revenue collection, we requested that National Treasury provide further detail regarding the R8 billion estimation. Again, we believe that the key to raising additional revenue would be to capture the wholly illegal who engage in illicit financial flows.
- Tax Administration: We continue to applaud SARS for its effective efforts in bettering tax administration. We further welcome the improved proposals for the ADR process. However, VAT administration, particularly the VAT refund process remains in a quagmire for taxpayers. At present, taxpayers are being punished for delaying input claims to avoid problems when claiming refunds, which should not be the case. We are further concerned regarding the fact that many businesses operate outside of the VAT system – namely on a cash basis. As a result, it was submitted that a cash for VAT system – similar to what is being implemented in a number of other countries - should be considered in South Africa so as not to disadvantage taxpayers.

Further representations were made pertaining to incentives and the taxation of infrastructure projects. Members may access the full presentation [here](#).

**Highlights from the 2024 Budget Speech (Reminder)**

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.

<b>Annexure C VAT WG 2023 Value Added Tax Act, 1991 (VAT Act)</b>	
<b>Foreign lessors of aircraft engines who are registered vendors -Sections 8 and 10</b>	
Gain access to the SAIT submissions <a href="#">here</a> . See item 3.	
<p><b>SAIT VAT Work Group Proposal</b></p> <p>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.</p>	<p><b>Budget Annexure C adjustment:</b></p> <p>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.</p> <p>[Refer to page 137 of the National Treasury Budget Review]</p>

**Annexure C Corporate Tax 2023  
Income Tax Act, 1962 (Income Act)**

**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.

**Annexure C Corporate Tax 2023  
Income Tax Act, 1962 (Income Act)**

**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]

**Draft Laws Amendment Bill (TLAB) Personal and Employment Tax WG 2023 submission  
Income Tax Act, 1962 (Income Tax Act)**

**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.

## **National Legislation**

### **2024 Draft Bills and Explanatory Memorandums (Reminder)**

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**

[Draft Revenue Laws Amendment Bill 2024](#) together with its [Draft Explanatory Memorandum RLAB](#)

[Draft Global Minimum Tax Bill 2024](#) together with its [Draft Explanatory Memorandum on Global Minimum Tax Bill, 2024](#)

[Global Minimum Tax Administration Bill 2024](#)

[Draft Rates and Monetary Amounts Bill 2024](#)



## Government has released the *Government Gazette* publication details for the following Income Tax Notices(\*updated)

Notice	Description	Implementation Date
*GG 50243 <a href="#">Notice 4456</a>	Fixing of rate per kilometre in respect of motor vehicles – section 8(1)(b)(ii) and (iii)	1 March 2024
*GG 50243 <a href="#">Notice 4458</a>	Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)(ii) (overnight allowance)	
*GG 50243 <a href="#">Notice 4457</a>	Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(a)(ii) (daily allowance)	

## LEGISLATIVE INTERPRETATION

### Calls for comment submitted

No calls for comment were submitted for the week 29 February – 6 March 2024. Legislative interpretation calls for comment

### Legislative interpretation calls for comment (Reminder)

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 (Reminder)

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:

- a. Under section 24H(2) each class member is deemed to carry on the trade of the partnership.
- b. 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.
- c. 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.
- d. 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).
- e. 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 29 February – 6 March 2024.

### **Other SARS publications and announcements**

No other SARS publications and announcements were made for the week 29 February – 6 March 2024.

### **SARS Commissioner welcomes the High Court decision in the case of SARS and the BPSA**

On 4 March 2024, the Commissioner for the South African Revenue Service (SARS), Mr Edward Kieswetter, welcomed the High Court decision to dismiss an application for leave to appeal by British Petroleum of South Africa (BPSA) which intended to review the Commissioner's decision to refuse BPSA's refund claims and levy forfeiture under the Promotion of Administrative Justice Act (PAJA). Commissioner Kieswetter expressed his satisfaction that the court has provided legal certainty and clarity on how SARS should deal with ghost exports.