



Presentation on the:

- Draft Taxation Laws Amendment Bill, 2024; and
- Draft Tax Administration Laws Amendment Bill, 2024

to the

Standing Committee on Finance and the Select Committee on Finance

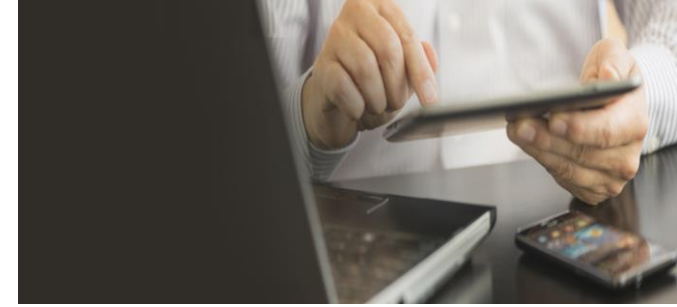
9 October 2024

YOUR KEY TO THE TAX COMMUNITY

Prescription period for input VAT tax claims

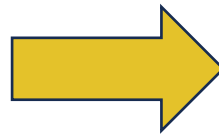
Problem with this proposed change:

Amend the VAT Act to require that past deductions be claimed in the period they were first entitled to the deduction. Vendors would need to re-open past returns for this purpose.



Practical considerations

- **Re-opening Returns:** Vendors may face the need to re-open multiple tax periods, increasing administrative burdens.
- **High Volume, Low Value Claims:** Vendors often process claims in bulk, delaying the claim until after document review.
- **SARS System Limitations:** Current systems do not accommodate increases in input deductions for past periods, necessitating system updates.



Recommendation:

Separate Reporting Field: Allow vendors to declare unclaimed input VAT in current returns within 6 months of entitlement.

SARS System Adjustments: Modify e-filing to enable easy submission of past claims.

De-minimis Threshold: Consider excluding low-value claims from strict requirements, allowing for consolidated claims across multiple periods

Clear guidelines and system enhancements will be critical for effective implementation

Controversial amendments to section 24I

- Objective: Amend Section 24I to allow ring-fencing and carry-forward of foreign exchange losses for companies not trading.

Unprincipled: Ring-fencing currency losses against currency gains is patently unfair. Cross-border business is extremely risky. Government wants the gain without equally bearing the loss, all of which is outside the taxpayer's control.

Application of the amendment is too broad: We understand that some taxpayers exploit the flexibility of currency, leading to potential abuses. The only perceived abuse is speculative trading outside currency needed for business activities.

Impact on Trading Companies: Challenges arise for trading companies with net exchange losses, preventing offsets against ordinary income.

Recommendations

- **Maintain Current Framework:** Retain Section 24I as it is and amend Section 20 and target non-business currency losses to the extent such abuses can be demonstrated.

OR

- Focus on **ring-fencing susceptible gains and losses to prevent abuse:**
 - Passive currency losses
 - Transactions involving connected persons

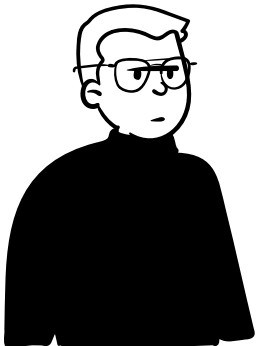
Key Question: What constitutes this abuse, and how can we address it?

Trust in Turmoil: Navigating the Maze of Anti-Avoidance Measures

Current Issue: Low- or no-interest loans are excluded from trust anti-avoidance measures, creating conflicts with transfer pricing rules when the arm's length interest rate is below the official rate.

Notes:

- This proposed amendment is problematic as it introduces a “higher of” test 7C or 31.
- This is unprincipled and in violation of treaties.
- A foreign loan carries foreign currency risk unlike a domestic loan.
- **Potential Double Taxation:** Proposed wording may lead to double taxation because the foreign country counterpart will only accept an arm's length rate.
- **Commercial Viability:** Current examples in the draft EM are not realistic, as arm's length rates are rarely below the repo rate.



The proposed amendments go beyond trust anti-avoidance and create unfair distortions for legitimate cross-border loans.

Appointment of Public Officers

- **Removal of Appointment Period welcome:** The mandatory one-month period for appointing a public officer is eliminated, allowing newly formed companies to have their directors and public officer in place at formation.
- **Default Appointment Rule welcome:** If a public officer is not appointed during formation, senior officials will automatically be designated as the public officer, following a specified order of priority.
- **Ability to be removed:** The rules need to be clarified as to how one can remove oneself from the role, especially if automatically appointed. Frustrations exist when SARS system delay or prevent resignation.
- **Growing concern of being a public officer:** Recent rulings emphasize greater scrutiny of public officers' actions. Decisions are increasingly subject to judicial review, leading to potential civil and criminal liabilities. Growing risk for public officers who may not wish to be subject to this type of exposure.



- What is the order of appointment justified?
- Default list of who will be considered the public officer will apply or SARS can designate a suitable person to represent the company as public officer – we query fairness and commercial viability of the process

Laypersons in the Tax Court Battlefield



New provision allows individuals (not legal practitioners) to represent taxpayers in the Tax Court if deemed "fit and proper" by the president.

Concerns:

- **"Fit and Proper" Criteria:** Lack of clarity on how strictly these criteria will be enforced compared to enrolled legal representatives.
- **Qualifications:** Questions arise about the ability of untrained individuals, including those with questionable backgrounds, to represent taxpayers effectively.
- **Court Conduct:** Uncertainty on whether taxpayers will be held to the same ethical standards and court etiquette as legal practitioners.
- **Disparity in expertise:** SARS will be represented by trained legal professionals, while taxpayers may rely on individuals lacking legal knowledge.

Recommendations for Clarity:

- **Define "Fit and Proper":** Align criteria with the Legal Practice Act to ensure consistency.
- **Professional Registration:** Require natural representatives to be registered with a professional body or recognized tax practitioners.
- **Enhance Tax Court Rules:** Implement clear procedures for assessing and confirming a representative's fitness to appear in court.



Conclusion

The proposed amendment introduces significant changes in Tax Court representation, necessitating further refinement to ensure fair and effective taxpayer representation while maintaining the integrity of tax proceedings.



Objection Against Assessment or Decision – Moving the ADR earlier in the process

- Introduction of Alternative Dispute Resolution (ADR): Aimed at enhancing the efficiency of the dispute resolution process, the amendment allows for ADR at the objection phase, facilitating earlier resolution through improved document exchange and engagement.
- **Commendable Development:** The amendment is a positive step reflecting SARS and National Treasury's responsiveness, but clarity on the mechanics and implications is essential to protect taxpayers' rights and avoid procedural delays.
- Clarification Needed: Questions arise regarding the procedural steps if the ADR outcome is unfavorable. ***Will a second ADR be allowed if the taxpayer opts to return to the objection and appeal?***

Recommendation:

- **Define Time Periods:** Clearly specify the timeframes related to the ADR process.
- **Update Rules:** Revise current ADR rules to align with the expanded process, ensuring that if proceedings are suspended during ADR, they resume from the point of suspension if ADR is unsuccessful.
- ADR should be headed by truly independent arbitrators; for neutrality not SARS employees



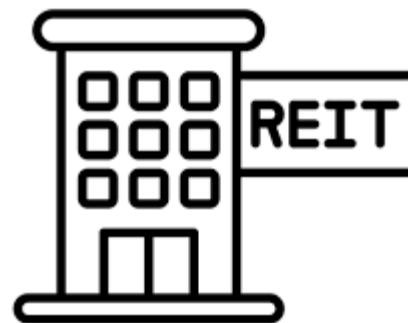
Unlisted Real Estate Entities: A Step forward but not far enough

Unfairness: Unlisted real estate investment vehicles are at a longstanding competitive disadvantage with listed real estate entities (listed REITs) because the latter have a special tax dispensation to prevent double taxation; whereas, unlisted real estate investment have no relief. Unlisted REITs mainly include property subsidiaries of exempt pensions (including the GEPPF) and subsidiaries of four fund insurers.

Longstanding: This unequal treatment has continued for 12+ years

Tentative relief: The Bill provides space for unlisted property investment vehicle relief but only upon conditions set by the FSCA approved by National Treasury. This relief will only of after the COFI Bill – years away.

Narrow transitional relief: The Bill seemingly delays the anti-avoidance interest limitation of section 23M (and the hybrid debt rules), but this transitional relief is too narrow, failing to cover the majority of unlisted property investment structures.



Fueling Confusion: Unraveling the Retrospective Amendments

- International Standards: South Africa updated its tariff structure in 2002 for "light oils and preparations" (subheading 2710.11, now 2710.12) in line with WCO standards.
- Proposed Changes: The government plans to retrospectively reclassify these products to 2710.19, effective January 1, 2002, to confirm their liability for fuel levies.



Clarification Requests:

- **What policy reason exists for taking this amendment back so far?**
- **Uncertainties:** We seek clarification on licensing and compliance requirements.
- **Product Classification:** We need insight on the implications of distilling beyond 210°C. Will Additional Note 1(g) apply, allowing for classification under 2710.19?

The ETI Enigma: What's Behind the abuse?

Government proposal

- Objective: Amendments aim to prevent abuse of the ETI scheme by training institutions falsely claiming incentives for non-existent employee payouts.
- New Stance: Training costs should be the employer's responsibility; punitive measures are proposed to curb abusive behaviors.



- **Concerns:** Identified behaviors may not be considered abuse without specific legislation. Collaboration is needed to address youth unemployment instead of imposing punitive measures.
- **Historical Context:** Previous amendments did not highlight clear abuses as now referenced.

Recommended Proposals

- **Clarity on Definitions:** Simplify the definition of 'monthly remuneration' to focus on cash actually received by employees.
- **Limit Penalties:** Existing provisions allow for penalties; further punitive measures in the ETI Act may be unnecessary.
- **Workshops:** Propose collaborative sessions to improve ETI implementation.
- **Stakeholder Input:** Consider suggestions to enhance effectiveness, including wage threshold increases and administrative simplifications.
- **Regulatory Changes:** Issue regulations to adapt the scheme and address unintended consequences.

VAT B2B Exclusion

We fully support intent of the amendment

Concerns:

- The amendment is far too generous and may become unsustainable in the future. Ambiguity over whether a mix of electronic and normal service supplies will trigger VAT reporting requirements.
- Open ended to create uncertainty: this should be limited to group companies and connected person which will be easier to track for both parties.
- Potential instability in registration status due to minimal supplies to non-VAT registered vendors.



Recommendation:

- **De Minimis Rule:** Introduce a threshold allowing non-VAT registered supplies up to R1 million in 12 months before triggering VAT registration.
- **Registration Options:** Allow suppliers to apply to remain on the VAT register, even if their supplies qualify for the exclusion.
- **Legislative Clarity:** Ensure no section 8(2) adjustments are required upon deregistration due to the new rules.
- **Threshold Calculation:** Clarify how the ZAR 1 million threshold relates to supplies to non-VAT registered recipients and confirm VAT implications for registered vendor supplies.

Proposed VAT amendment: Supplies by educational institutions

Key Concerns

- **Ambiguity:** Current wording may broaden the scope of exempt supplies, potentially allowing many goods and services to qualify, thus complicating VAT treatment.
- Many educational institutions have claimed input tax relief based on taxable goods and services, often through a complex apportionment calculation, including for immovable property.
- Although they can spread this adjustment over 12 months, the proposed amendment may impose significant financial stress on already financially stretched institutions. This is also in addition to Section 18 adjustment- although once off, this will cause additional financial strain.
- Distort competitiveness in the market.

Impact on Higher Education Sector

- **VAT Treatment Changes:** Proposed amendments could shift many activities of higher education institutions to exempt status, complicating VAT registration and input tax claims.
- **Revenue Challenges:** Universities may lose significant income streams and be forced to cease being VAT vendors and deregister for VAT, further complicating financial management. Already financially strained and under funded universities may even be required to claw back previously deducted VAT as outlined in section 8(2).

SAIT recommendations

- Retain "solely or mainly for the benefit of learners" to prevent widening exemptions.
- **Consultation Needed:** Further discussions with the educational sector are essential before implementation.
- **Consider Transitional Provisions:** Address potential financial impacts with a longer adjustment period for input tax changes.

The proposed VAT amendment required careful reconsideration to prevent unintended tax costs for educational institutions.

We are pleased that the National Treasury has scrapped this proposal!



THANK YOU