



1 December 2022

**To: The National Treasury**

240 Madiba Street  
PRETORIA  
0001

**The South African Revenue Service**

Lehae La SARS,  
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**Via email:**                      **National Treasury**      (2023AnnexCProp@treasury.gov.za); and  
   **SARS**                              (acollins@sars.gov.za)

**RE: ADDENDUM TO THE LEGISLATIVE PROPOSALS TO MITIGATE THE  
WITHDRAWAL OF PN 31 (NOW INCLUDING PN 37)**

We attach an Addendum to the Annexure C proposal from SAIT Tax Technical, as it pertains to technical proposals for possible inclusion in Annexure C of the 2023 Budget Review, and specifically in relation to the proposed withdrawal of Practice Note (PN) 31 of 1994 “*Interest paid on Moneys Borrowed*”, and in this Addendum, Practice Note 37 “*Deduction of fees paid to accountants, bookkeepers and tax consultants for the completion of Income Tax returns*”.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate. Please do not hesitate to contact us should you need further information.

Yours sincerely

**SAIT Tax Technical**

**Disclaimer**

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**Unless otherwise indicated, all references are to the Income Tax Act, No. 58 of 1962 (the ITA)**

**DEDUCTION OF FEES PAID TO ACCOUNTANTS, BOOKKEEPERS AND TAX CONSULTANTS FOR THE COMPLETION OF INCOME TAX RETURNS**

[Applicable provisions: Proposed section 11B (?)]

**1. Background**

- 1.1. SARS has communicated its intention to withdraw PN 37 for years of assessment commencing on or after 1 March 2023.
- 1.2. According to the “Notice of Withdrawal”, the intention to withdraw the Practice Note provides a window for the public to make representations for legislative amendments as part of the Budget 2023 Annexure C process by the deadline of 30 November 2022. We appreciate National Treasury and SARS’ indulgence in accepting this addendum to the initial submission.
- 1.3. PN 37, which was issued on 13 January 1995, contains the requirements for the deduction of fees paid to accountants, bookkeepers, and tax consultants for the completion of income tax returns, amongst other items.
- 1.4. The basic requirement is to disallow the deduction against ordinary salary and income, but allow the deduction against commission, etc. for which expenditure is generally allowable under section 11(a) (general deduction formula) or section 11(e) (wear and tear).
- 1.5. However, PN 37 also goes wider in that it allows a deduction for ‘pensioners’ of administration costs (including fees for the completion of income tax returns) paid to the financial institutions that administer their financial affairs (e.g. banking institutions, boards of executors or similar institutions).
- 1.6. PN 37 further states that only fees which were actually paid or are payable are deductible, which echoes the current Legislative principles.
- 1.7. Should the income that the fees are to be set off against be interest (such as in the case of the ‘pensioners’), the fees paid will only be allowed as a deduction to the extent that they do not create a loss. PN 37 basically ensures that any fees are ringfenced to the extent of interest if this is the only income that the person receives.
- 1.8. Moreover, PN 37 states that where the taxpayer receives income in the form of exempt interest, taxable interest and dividends, the fees would have to be apportioned on an income basis. Therefore, the fees should be apportioned between the ‘taxable’ and ‘non-taxable’ receipts.



1.9. SARS' reasoning regarding the proposed withdrawal ([Notice of withdrawal](#)):

*"The introduction of the Tax Administration Act 28 of 2011 (TA Act) brought about the term, "registered tax practitioner". The effect of this introduction means that only persons that are "registered tax practitioners" as defined, may provide tax advice or assist in completing a tax return for a fee. Therefore, PN 37 in its current form does not incorporate the requirements of the TA Act. The modernisation of the e-filing system has also simplified the process of submitting tax returns and assistance is provided to taxpayers in person or electronically by SARS in this regard. The intention to withdraw the Practice Notes provide a window for the public to make representation for legislative amendments in their place as part of the Budget 2023 Annexure C process by its deadline of 30 November 2022. The intention is to withdraw the Practice Notes for years of assessment commencing on or after 1 March 2023."*

1.10. SAIT has consulted on the matter and wishes to provide the feedback below.

**2. The legal nature of the problem**

- 2.1. The range of fees that may be deducted is narrow and in the case of 'pensioners', prescriptive.
- 2.2. Moreover, due to the limitations inherent in section 23(g) and section 23(m), the deductions catered for above would without the support of PN 37 not be allowable for 'pensioners':

23(g) *any moneys, claimed as a deduction from income derived from trade to the extent to which such moneys were not laid out or expended for the purposes of trade;*

23(m) *subject to paragraph (k), any expenditure, loss or allowance, contemplated in section 11, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration, as defined in paragraph 1 of the Fourth Schedule, other than—*

- (i) any contributions to a pension fund, provident fund or retirement annuity fund as may be deducted from the income of that person in terms of section 11F;*
- (ii) any allowance or expense which may be deducted from the income of that person in terms of section 11 (c), (e), (i) or (j);*



- (iiA) *any deduction which is allowable under section 11 (nA) or (nB); and*
- (iii) *.....*
- (iv) *any deduction which is allowable under section 11 (a) or (d) in respect of any rent of, cost of repairs of or expenses in connection with any dwelling house or domestic premises, to the extent that the deduction is not prohibited under paragraph (b);*

- 2.3. If a taxpayer were conducting a trade, with trading income to set off the financial costs incurred in generating (and substantiating) such income, there could still be the question of whether the particular expenditure were incurred in the production of the income.
- 2.4. Examples from a tax perspective include:
  - The completion of income tax returns;
  - The completion of other types of tax returns;
  - Accessing a Tax Status Certificate;
  - Tax dispute services, e.g. an objection when SARS disallows a specific deduction; and
  - Reviewing of a tax pack; etc.
- 2.5. In the case of 'other financial services', examples are:
  - Audit fees;
  - The cost of preparation and publishing of annual financial statements; and
  - Drawing up the initial accounts for the purposes of preparing a tax return; etc.
- 2.6. In the case of administrative costs (including fees for the completion of income tax returns) paid to the financial institutions that administer the financial affairs of 'pensioners', the items that are included as administrative fees may be as varied as the institutions providing the administrative services.

### **3. The nature of the business / persons impacted**

- 3.1. Should PN 37 be withdrawn without being replaced by suitable legislative amendments that provide more certainty and clarity, individuals and legal entities that incur costs to ensure that they pay their fair share of tax, and those that are required by circumstances to rely on others to confirm or administer their accounts, will under certain circumstances be unable to deduct the expenses so incurred.

### **4. Proposal**

- 4.1. We accept that the introduction of the Tax Administration Act, No. 28 of 2011 brought about the term, "registered tax practitioner", and that the effect of this introduction is that only persons that are "registered tax practitioners" as defined, may provide tax advice, or assist in completing a tax return for a fee. From that perspective, we accept that PN 37 is outdated.



- 4.2. Although we accept that the modernisation of the eFiling system has simplified the process of submitting tax returns and assistance is provided to taxpayers in person or electronically by SARS in this regard, the tax legislation has grown more, and not less complex. Whilst third-party data submissions and auto-assessments do alleviate the burden on some taxpayers, there remain a multitude of taxpayers for whom the possibility of managing their own investments ('pensioners') and completing their own tax returns is just not feasible.
- 4.3. We propose that the Legislature consider the complexity inherent in certain financial transactions, investments, and accounts. Whereas it would have been feasible for some individuals or even a small company years ago to provide a mostly correct summary of their financial affairs, prepare their tax returns, and to manage their investments themselves, this is no longer the case for most individuals and legal entities.
- 4.4. We therefore request that the Legislature consider introducing a specific deduction dedicated to allowing specific (albeit growing) financial services to be deductible under certain circumstances.
- 4.5. As stated above, SARS has communicated its intention to withdraw PN 37 for years of assessment commencing on or after 1 March 2023. Should the legislative proposals be accepted, the earliest that the legislation would be enacted (and could be relied on), is for years of assessment commencing on or after 1 March 2024. We therefore recommend that SARS reconsider the retraction date of PN 37 to allow the Legislature to provide the measures required to support those businesses that currently rely on PN 37.

End.