



14 April 2023

To: The South African Revenue Service

Lehae La SARS
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Via email: SARS: acollins@sars.gov.za

**COMMENTS ON THE DRAFT NOTICE PERTAINING TO THE RETURNS OF
INFORMATION TO BE SUBMITTED BY THIRD PARTIES IN TERMS OF SECTION
26 OF THE TAX ADMINISTRATION ACT**

Dear Colleagues,

We set out below the comments from SAIT Tax Technical pertaining to the above.

Background

On 29 March 2023, SARS issued a draft notice pertaining to returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (herein after referred to as **"the draft notice"**). On a high-level basis we note that this public notice replaces Notice 241 published in Government Gazette No. 41512 dated 23 March 2018 with effect from 1 March 2023 and has been updated to include that the following persons submit third party returns:

"2.14 A person referred to in section 18A(1)(a) to (c) of the Income Tax Act, 1962, that issued a receipt in terms of section 18A(2) of the Act;

2.15 A "trust" as defined in section 1 of the Income Tax Act, 1962, that is a "resident" as defined in that section; and

2.16 A person who issues a solar installation certificate of compliance."

We set out below our most pertinent comments in relation to the aforementioned. Our comments are restricted to the following persons who are required to submit third party returns:

1. Resident trusts; and
2. Persons who issue solar installation certificate of compliance (i.e., electricians).



Discussion

1. Trusts

The draft notice requires a resident trust as defined in section 1 of the Income Tax Act, 1962 (**the ITA**), to submit returns of information of any amount vested in a beneficiary including income (nett of expenditure), capital gains and capital amounts distributed.

The IT3(t) data must be submitted to SARS in accordance with the SARS' Business Requirement Specification.

The draft notice requires that the returns to be submitted by a trust in respect of the period from 1 March to the end of February, must be submitted by 30 September.

The annual ITR12T is prepared in accordance with the financial statements of the trust. Furthermore, the filing periods for the submission of the annual ITR12T income tax returns for trusts in respect of the 2023 year of assessment were previously as follows:

- Trusts that are not provisional taxpayers: 1 July 2022 to 24 October 2022; and
- Trusts that are provisional taxpayers: 1 July 2022 to 23 January 2023.

We note that the following provisions are henceforth relevant:

Section 25B(1) of the ITA outlines that:

"any amount (other than an amount of a capital nature which is not included in gross income or an amount contemplated in paragraph 3B of the Second Schedule) received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall, subject to the provisions of section 7, to the extent to which that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to that amount during that year, be deemed to an amount which has accrued to that beneficiary, and to the extent to which amount is not so derived, be deemed to be an amount which has accrued to that trust."

Section 25B(2) of the ITA stipulates that:

"where a beneficiary has acquired a vested right to any amount referred to in subsection(1) in consequence of the exercise by the trustee of a discretion vested in him or her in terms of the relevant deed of trust, agreement or will of a deceased person, that amount shall for the purposes of that subsection be deemed to have been derived for the benefit of that beneficiary."



Section 25B(3) of the ITA further stipulates that:

“any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any amount referred to in subsection (1), to the extent to which that amount is under that subsection deemed to be an amount which has accrued to—

- (a) a beneficiary, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that beneficiary; and*
- (b) the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that trust.”*

Commentary

The financial statements of the trust reflect, among other things, the gross income, the deductions or allowances and amounts vested in beneficiaries and the trust. Thus, this data may inadvertently be quite dense in nature. This would particularly be the case with trading trusts.

The information referred to above must in terms of the draft notice be submitted to SARS by **30 September**. In essence, we note that the period within which information is required to be submitted for both categories of trusts has now been shortened.

Given the amount of data that must be processed, particularly when one considers the varying sizes and purposes of trusts, we are of the view that several trusts may find it difficult to adhere to this deadline as these trusts may not be able to timeously prepare financial statements and submit the information as required by the draft notice. This may in turn attract penalties, which in our view would not be apt.

2. A person who issues a solar installation certificate of compliance

The draft notice requires that a person who issues a solar installation certificate of compliance (i.e., an electrician) must provide all prescribed information in respect of solar photovoltaic panels that were first brought into use during the period from 1 March 2023 to 29 February 2024, by 31 May 2024.

Whilst we welcome the announcement of the rooftop solar tax incentive in the National Budget, 2023, we note that to qualify for the tax incentive a certificate of compliance for the installation must be issued from 1 March 2023 to 29 February 2024. At the time of drafting this submission, we note that this period has in effect already begun.



However, the draft Notice states that SARS has indicated that the manner in which this information should be made will be “*determined after consultation with industry bodies and other stakeholders.*”

On the basis that the rooftop solar incentive is essentially currently active, we are concerned regarding the fact that the aforementioned consultation has to date not taken place. A meeting was scheduled on 30 March 2023 by the National Treasury to discuss the “*Solar Panel – Tax incentive (Members Consultation)*”. However, at the inception of the aforementioned meeting it transpired that the meeting was in fact to discuss “*Solar Panel - Bounce Back Loan Guarantee Scheme (Member's Consultation)*”. Thus no consultation regarding the tax aspects of the roof top solar incentive has to our knowledge taken place.

Lack of consultation in this regard will inadvertently result in third parties not being able to ascertain the manner in which to provide information. Furthermore, assuming that SARS will develop Business Requirement Specifications in this regard, the finalisation and publication process hereof may be inadvertently long which may further disadvantage persons who issue solar installation certificates of compliance from providing the required information.

Bearing in mind that the persons upon whom this requirement is incumbent are so to say “lay persons”. To this end, we would recommend that consultations with industry take place timeously so as to enable all stakeholders sufficient time to understand and familiarise themselves with manner in which the third-party information should be submitted.

Information required to be completed:

The draft Notice outlines that the following information is required to be submitted by a person who issues a solar installation certificate of compliance:

- the identity number (if no income tax reference number is available) of the person on behalf of whom the installation was done; and
- the physical address of installation.

The legalities regarding the collection and processing of the abovementioned information are set out in the Protection of Personal Information Act, 2013 (**POPI Act**). The POPI Act outlines minimum standards and requirements regarding accessing and processing of any personal information belonging to another.

Amongst others, any entity that accesses and processes personal information of others is required to comply with these minimum standards and is also required to appoint a designated information officer who is responsible for *inter alia*:

- ensuring the company complies with the POPI Act; and
- working with the Information Regulator.



Additionally, persons who access and process information are required to inform the person from whom information is accessed which **third parties** have had / will have access to their personal information.

Also, persons who issue a solar installation certificate of compliance will also need to ensure that person from whom personal information is accessed have provided the necessary and express consent as required by the POPI Act.

Therefore, given the intricate nature of the POPI Act and the stringent compliance requirements as well as associated penalties thereto, it is clear that persons who issue a solar installation certificate of compliance will need to have a basic working understanding of the POPI Act and to comply therewith. This is an aspect that should be borne in mind my SARS when requesting such information from this category of persons.

Conclusion

We appreciate the opportunity to comment on this draft notice. Please do not hesitate to contact us should you require further information or clarification.

Yours faithfully,

SAIT Tax Technical

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