TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 16 - 22 January 2025
(Issue 02 -2025)

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TOP STORY

Time to consider getting your fixed percentage tax directive

A Fixed Percentage Tax Directive, issued by the South African Revenue Service (SARS), instructs an employer to deduct employees' tax (PAYE) from an employee's remuneration at a predetermined fixed percentage, regardless of the amount earned. This is particularly beneficial for individuals whose income fluctuates monthly, such as commission earners, freelancers, or personal service providers. Applying a consistent tax rate helps stabilise tax payments throughout the tax year and can prevent a significant tax liability upon assessment.

With the conclusion of the 2024 filing season, many taxpayers and tax practitioners are gearing up for the provisional tax filing rush at the end of February 2025. However, what many overlook is that the 2026 fixed percentage tax directive must be in place by the start of the new year of assessment on 1 March 2025.

Now is the perfect time to begin preparing and applying for the fixed percentage tax directive to ensure you are compliant and nothing slips through the cracks. To learn more about the fixed percentage tax directive, click here.

#StayAbreastOfTheTaxWave

MEMBERS' DIGEST

Imputation of personal liability on individuals managing financial affairs of non-compliant companies

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The growing importance of personal liability in corporate governance and tax compliance is a pressing issue. It is increasingly being imposed on individuals who control or are regularly involved in managing a company's financial affairs. Section 180 of the Tax Administration Act (TAA) outlines a complex set of responsibilities that can implicate various parties in a company's failure to meet its tax obligations due to fraud or negligence. This article delves into the implications of personal liability, the degree of control or involvement required, and the legal precedent that supports this doctrine

Historically, tax laws have not explicitly delineated the parameters of formal responsibility regarding a company's financial management. Instead, the legislation necessitates that any individual who exercises considerable control or regular involvement in the company's financial dealings be held accountable for any delivery failures towards tax debts. This broad scope extends beyond the conventional roles of shareholders or directors, encompassing anyone who possesses a factual influence over the financial decisions and practices of the enterprise. This broad interpretation raises critical questions regarding delineating liability and the thresholds of negligence or fraud that must be satisfied to invoke such personal responsibility.

To fully understand this discourse, it's crucial to grasp the language and intent of section 180 of the TAA. This provision states that individuals may be personally liable for a company's unpaid tax debts if their negligence or fraudulent actions contribute to the non-compliance. The Act focuses on 'control' and 'involvement,' categorising these terms in a way that allows for a broad interpretation. It identifies liable parties who, while not holding formal authority, wield substantial influence over financial operations.

The actions of a company director who failed to ensure adequate financial oversight ultimately led to a significant tax deficiency. In this context, the director's apparent lack of vigilance in monitoring financial affairs was deemed negligent, satisfying the threshold for personal liability under the Act.

Moreover, the ramifications of tax contravention are far-reaching and detrimental. Not only does it impose a financial burden on the company itself, but it also presents severe reputational risks for the individuals involved. Tax noncompliance, mainly when characterised by negligence or fraudulent behaviour, can lead to substantial financial penalties, legal prosecution, and, in extreme cases, incarceration. This aspect underscores the importance of corporate governance and individual accountability in compliance with tax laws. When a managing director had knowingly facilitated tax evasion schemes, the company and the director faced severe penalties. The active participation in fraudulent activities warranted personal liability, accentuating the expectation for individuals in positions of control to maintain vigilance and ethical prudence.

The interpretation of 'control' within section 180 extends to those who may not hold formal titles within a company but exhibit significant influence over its operations. For instance, a substantial shareholder in a corporation with a controlling interest, despite lacking a formal management title, may be held liable for his actions or negligence that adversely affects the company's tax compliance. The implications of such interpretations are wide-reaching, as they underscore the importance of individual awareness of one's influence and responsibility within the corporate structure.

The law requires a careful balancing of interests—a recognition that while fostering a corporate environment that encourages entrepreneurial spirit is vital, it must coexist with an unwavering commitment to tax compliance. This balance is achieved by ensuring that while individual accountability becomes a pivotal mechanism for ensuring compliance, it equally serves to deter negligent or exploitative practices that jeopardise the financial ecosystem. Failure to adhere to tax obligations undermines the company's financial integrity and jeopardises the state's fiscal resources, prompting stricter regulations and enforcement actions. Thus, the law functions not only as a punitive measure but also as a catalyst for positive behavioural change within corporate governance.

Legal scholars and tax policy experts have long debated the consequences of imposing personal liability under such expansive interpretations. Critics argue that these provisions may encourage reckless management practices, wherein individuals might divorce themselves from fiduciary responsibilities, fearing potential personal repercussions. However, proponents contend that heightened vigilance is vital in ensuring adherence to tax laws and ethical financial management. Through careful construction and rigorous enforcement of personal liability frameworks, the law is a punitive measure and a catalyst for positive behavioural change within corporate governance.

Adverse implications arise when authorities pursue personal liability for unpaid tax obligations, alongside a lack of clarity in distinguishing between negligence, fraud, and mere incompetence. The decision to impose personal liability hinged upon a multifaceted examination of the individual's ongoing involvement and the specific nature of their actions (or inactions). The ruling elucidated that personal accountability should not only hinge on outcomes but should be critically assessed against the responsible party's state of mind and awareness. This underscores the need for individuals to exercise caution and diligence in their financial management roles, as personal liability risks are significant and should not be underestimated.

As the corporate law landscape evolves, individuals managing financial affairs must foster a culture of transparency and compliance. Implementing rigorous internal accounting controls, regular oversight evaluations, and ethical training programmes can significantly mitigate risks associated with personal liability. This proactive approach empowers individuals to take control of their roles and responsibilities, reducing the likelihood of negligence or fraudulent conduct and instilling a sense of responsibility and proactivity in the audience.

The framework prescribed by section 180 of the Tax Administration Act necessitates that those who control or engage regularly with a company's financial affairs must do so with vigilance and integrity. The imposition of personal liability serves as a critical legal remedy to deter negligence and fraud, reinforcing the expectation that individuals uphold their fiduciary duties. Reflecting on the pertinent case law, it is clear that the law evolves within a context where the stakes of tax compliance are markedly high—a failure to act responsibly can result in dire consequences for the companies involved and the individuals steering those companies. As the discourse surrounding corporate accountability continues, it remains imperative that legal practitioners and policymakers work collaboratively to forge solutions that foster compliance while safeguarding individual rights; in this pursuit, the delicate balance between promoting innovation and ensuring accountability remains paramount. This reiteration of responsibility is intended to make the audience feel the weight of their roles and the importance of their actions.

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

Year-end changes causing a headache for tax practitioners

Company year-end change process:

A company may decide to change its financial year-end for operational, financial, or strategic reasons. Whatever the reason may be, it is important to understand the process and its requirements to avoid delays or potential rejection of applications. For companies, there is a two-part process involved in changing a financial year.

Part 1: Legal and administrative steps

- **Approval by shareholders/directors:**
  The change must be approved by the company's board of directors or shareholders as per the company's memorandum of incorporation (MOI) and relevant governance policies.
- **Update with the Companies and Intellectual Property Commission (CIPC):**
  Log into the CIPC portal and update the financial year-end via the change of year-end application.
- **Pay the required fee (if applicable):**
  Once approved, the CIPC will update the company's records.

Part 2: Steps with SARS

- **Notify SARS:**
  Log into eFiling and navigate to the "Maintain Company Details" section. Here you can update the financial year-end. Once completed, submit the supporting documents (e.g., the CIPC confirmation of the new year-end).
- **Adjust tax returns:**
  SARS will align your tax return periods with the new financial year-end. If the new financial year exceeds 12 months, you may be required to submit a tax return for the transitional period.
- **Provisional tax:**
  Update your provisional tax payments accordingly, as they will align with the new reporting period.

Throughout this process, it is important to keep the following in mind:

- Always ensure that the change complies with the provisions of the Companies Act.
- A financial year cannot exceed 15 months during the transitional period.
- In some instances, SARS may require justification for the change.

Individual year-end change process:

Although less prevalent, certain circumstances may necessitate that the year-end of an individual must also be changed. In South Africa, individuals are typically aligned with the standard tax year, which runs from 1 March to the last day of February. Although SARS does not usually allow individuals to deviate from this, there are some scenarios (e.g., expatriates, special tax arrangements, members of partnerships, etc.) where deviations may occur.

- Manual submission

Individuals who meet the necessary criteria must submit a formal request to SARS detailing the reason for the desired change. Supporting documentation will also be required, including a copy of the ID, proof of address, and power of attorney if requested by a tax practitioner.

- SARS approval process

SARS will assess the application and provide feedback on whether the request is approved- the average turnaround time is 21 business days.

Update on the bank verification delays and system upgrades

Following an impact analysis of issues related to bank verification cases and refund notices, SAIT has formally submitted a proposal to SARS requesting the national head office to investigate and consider the proposed solutions to remedy the current backlogs.

The submission highlights the following key issues:

- **Delays in bank verification cases:** SARS frequently fails to resolve these issues within the 21-business-day turnaround time, leading to frustration and uncertainty for taxpayers.
- **Redundant refund notices:** Weekly notices continue even after taxpayers have submitted all required documents, causing unnecessary administrative burdens.
- **Uncommunicated account stoppers:** Stoppers are placed without notifying taxpayers, delaying case progression and eroding confidence in the system.

In response, SAIT made the following proposals to possibly remedy the current status quo:

- Establish a dedicated contact point for managing delays and refund queries.
- Implementation of a transparent notification system to explain account stoppers.
- Optimising processes to ensure that valid banking details as reflected on the RAV01 form are not incorrectly flagged.

Members can access the full submission here.

SAIT TaxHelpline – escalations

As part of our ongoing commitment to serving our members, SAIT escalates appropriate cases within the SARS structures on their behalf. For assistance with this members can submit their queries via the TaxHelpline.

Read more on the process and requirements here.

The most urgent escalations this week include:

1. Delays in finalising 2024 income tax and VAT verifications.
2. Delays in finalising bank verification cases.
3. Delays in finalising and payment refunds.
4. Delays in finalising deceased estate compliance requests.

SARS regional and national operational meetings

SAIT and its Regional Representatives attend SARS/RCB regional meetings quarterly, offering opportunities for effective, systemic discussions (qualifying for CPD points)*.

** For effective and meaningful engagement with SARS, Regional Representatives are encouraged to provide three specific examples of issues or challenges that arise. It is important to note that regional meetings are not intended for individual case escalations but serve as a platform to address systemic issues impacting the broader tax practitioner community.*

Feedback from the RCB/SARS regional and national meetings

The last regional meeting of 2024, held in Mpumalanga on 12 December, occurred after the publication of the last 2024 newsletter. Feedback from this meeting is now available here.

Upcoming RCB/SARS regional and national meetings

1. North West- 17 February 2025;
2. Mpumalanga – Emalahleni- 17 February 2025;
3. Mpumalanga – Mbombela- 21 February 2025;
4. Western Cape- 5 March 2025;
5. Limpopo- 11 March 2025;
6. Free State and Northern Cape- 10 March 2025;
7. Free State and Northern Cape- 9 June 2025;
8. Free State and Northern Cape- 8 September 2025; and
9. Free State and Northern Cape- 10 November 2025.

Other meetings of interest

1. Western Cape VAT registration workshop- 27 January 2025;
2. RCB Forum meeting- 4 March 2025;
3. RCB Forum meeting- 3 June 2025;
4. RCB Forum meeting tentatively scheduled for 16 September 2025;
5. RCB Forum meeting- 18 November 2025

DAILY COMPLIANCE AND ADMINISTRATION

Due dates for reporting and payments: January 2025

Month	Date	Tax Type	Notification
January 2025	07/01/2025	Employment Taxes	**EMP201** - Submissions and payments
	20/01/2025	Income Tax	**ITR12 - Submission due date** for a return for provisional taxpayers and is submitted by using the **SARS eFiling platform**
	20/01/2025	Income Tax	**ITR12T - Submission due date** for the Trust Income Tax returns.
	24/01/2025	Value-Added Tax	**VAT201** - Manual submissions and payments
	31/01/2025	Value-Added Tax	**VAT201** - Electronic submissions and payments

SAIT member resources

- SAIT important tax dates calendar – contains important dates from January 2025 to January 2026 (unchanged).
- SAIT SARS contact map – links service requirements to SARS channels (unchanged).

It might be time to consider getting your fixed percentage tax directive

A fixed percentage tax directive issued by SARS instructs employers to deduct employees' tax (PAYE) from an employee's remuneration at a predetermined fixed percentage, regardless of the amount earned. This is particularly beneficial for individuals whose income fluctuates monthly, such as commission earners, freelancers, or personal service providers. Applying a consistent tax rate helps stabilise tax payments throughout the tax year and can prevent a significant tax liability upon assessment.

- **Applicability: Fixed percentage directives are suitable for:**
  - Commission earners whose income may vary monthly.
  - Personal service companies and trusts.
  - Freelancers or independent contractors.

- **Application Process:**
  - The individual or their employer must apply to SARS using the IRP3(B) form.
  - Applications can be submitted electronically via SARS eFiling.
  - Essential information required includes personal details, income tax reference number, annual income, expected expenses and employer details.

- **Application turnaround time:**
  - Typically, SARS processes electronic applications received via eFiling within two business days.
  - It's advisable to submit all required information accurately and completely to avoid delays.

- **Validity:** The directive is valid only for the tax year or the period specified. Employers must adhere strictly to the directive's instructions and may not deviate from the prescribed tax rate.

It's important to note that while a fixed percentage directive standardises monthly tax deductions, the **final tax liability** is determined upon assessment at the end of the tax year. Therefore, individuals may still qualify for a refund or owe additional tax, depending on their total income and deductions for the year.

For more detailed information, or to apply for a Fixed Percentage Tax Directive, visit the SARS website.

The pensioner tax directive:

In 2021, SARS introduced a tax directive specifically for pensioners receiving income from multiple sources, such as a retirement fund pension, additional income from employment, or investments. This directive was implemented to address the common issue of under-deduction of tax, which often led to a substantial tax liability at the end of the tax year.

The main purpose of the directive is to prevent pensioners from facing a significant tax bill during annual tax assessments and ensure that PAYE deductions better align with the pensioner's overall tax liability.

In these cases, SARS consolidates the income from all known sources for the pensioner and calculates an effective PAYE rate based on the total income. The directive then instructs the respective payers (e.g., pension funds or employers) to deduct PAYE at the specified rate, ensuring adequate tax collection.

Initially introduced as a compulsory measure, the directive was later amended to include the option to opt in or opt out. Pensioners who wish to opt-in can apply via SARS eFiling or by visiting a SARS branch. The directive is generally valid for a specific tax year and must be renewed if income sources or amounts change significantly.

Reminder on the updated process for tax-exempt Institutions to apply for public benefit status

SARS has streamlined the application process for Tax-Exempt Institutions seeking Public Benefit Status, enhancing efficiency and ease of use.

Non-profit organisations (NPOs) play a vital role in addressing societal and developmental needs. To support their efforts, preferential tax treatment is available but not granted automatically. Eligible organisations must meet the criteria set out in the Income Tax Act and apply for exemption.

Eligible entities include:

- Public benefit organisations (PBOs)
- Recreational clubs
- Homeowners' associations
- Membership associations
- Professional bodies
- Public institutions
- Government entities (national, provincial, or local)
- Section 18A status

Improved EI1 application form

SARS has upgraded the EI1 application form for entities seeking income tax exemption.

Key form enhancements:

1. **Simplified completion:**
   - The form can now be saved, submitted as a PDF, or printed for convenience.
2. **Clearer guidance:**
   - Instructions are tailored to assist various taxpayers in completing the form accurately.
3. **Signature and declaration section:**
   - A dedicated section for those accepting fiduciary responsibility.
   - Eliminates the need for a separate EI2 form if the founding document is legally valid.
4. **Up-to-date legal compliance:**
   - The form includes measures aligned with Financial Action Task Force recommendations to mitigate risks.
   - A new "General" section requires details about Non-Profit Organisation registration and persons acting in fiduciary responsibility. While part of SARS's risk-based methodology, this section is not part of the approval criteria.

You can access the updated EI1 application form here.

Application guide

SARS has created a comprehensive guide with annexures for each Exempt Institution category. The guide provides detailed completion instructions and lists required supporting documents.

Download the guide with annexures here.

Transition period

Taxpayers are encouraged to adopt the updated EI1 application form immediately. However, applications submitted using the old forms will still be accepted until **28 February 2025**.

Other SARS and related operational publications and announcements

No other SARS and related operation publications and announcements were made during the week of 16 – 22 January 2025.

TAX PRACTITIONER MANAGEMENT

SAIT TaxHelpline – Tax practitioner access and functionality (eFiling)

No recurring tax practitioner access and functionality issues were identified via the TaxHelpline during the week of 16 – 22 January 2025.

Key tax practitioner news

No other tax practitioner news was published from 16 – 22 January 2025.

Government & stakeholder newsletters

SARS publishes the January 2025 edition of the Monthly Tax Digest

On 15 January 2025, SARS published the January 2025 edition of the *Monthly Tax Digest* newsletter. The latest edition of the newsletter covers the following topics:

- Deadline for provisional taxpayers and trusts;
- Which documents you need to file a trust return; and
- Filing season for provisional taxpayers.

For more details on these topics, access the full newsletter here.

A reminder of the leadership transition at the Office of the Tax Ombud

On 14 January 2025, the Office of the Tax Ombud (OTO) released a media statement announcing a leadership transition effective from 1 January 2025.

The OTO announced the appointment of Ms Mmamelao Malakalaka as Acting CEO, succeeding Professor Thabo Legwaila, whose leadership played a significant role in advancing the organisation's mission.

Ms Malakalaka has been part of the OTO since 2016, serving as Senior Manager: Office Enablement and Support Services. Her previous roles include Chief Financial Officer at NEMISA and Audit Committee Member for IPID. She holds a BCom in Accounting Science (UNISA), an MPhil in Development Finance (Stellenbosch University), and is a SAIPA-accredited Professional Accountant.

The OTO is confident that her expertise and leadership will continue to drive the OTO's commitment to fairness and transparency in the tax system.

Access the full media statement here.

Other tax practitioner access and functionality publications and announcements

- **16 January 2024:** SARS identified a new phishing scam targeting unsuspecting taxpayers by falsely claiming they are due a tax refund. The scam prompts the recipient to access a link to update their banking details. Taxpayers are strongly cautioned against accessing these links and advised to quickly discard such correspondence. These scams can be reported to phishing@sars.gov.za.
- **15 January 2024:** SARS announced that it would be conducting planned upgrades to the eFiling platform on Friday, 17 January 2025, from 18:00 to 21:00 and Saturday, 18 January 2025, from 16:00 to 19:00 . During these times, the digital platform may have been unavailable.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy & international agreements

National Legislation

Update on the national legislation promulgated into law

Legislation	Act and Gazette Number	Date of Promulgation
Global Minimum Tax Administration Act	Act 47 of 2024 (GG 51884)	9 January 2025
Global Minimum Tax Act	46 of 2024 (GG51830)	24 December 2024
Taxation Laws Amendment Act, 2024	Act 42 of 2024 (GG 51826)	
Tax Administration Laws Amendment Act, 2024	Act 43 of 2024 (GG 51827)	
Revenue Laws Second Amendment Act, 2024	Act 44 of 2024 (GG 51828)	
Rates and Monetary Amounts Amendment Act, 2024	Act 45 of 2024 (GG 51829)	

SAIT is pleased to announce that the Global Minimum Tax Act 46 of 2024 and the Global Minimum Tax Administration Act 47 of 2024 are now available on the Lexis Nexis portal.

This important legislation has also been added to the SAIT website, ensuring that our members always have access to the most up-to-date tax information.

The Income Tax Act has been updated to reflect the latest changes through:

- Taxation Laws Amendment Act, No. 42 of 2024; and
- Tax Administration Laws Amendment Act, No. 43 of 2024.

LEGISLATIVE INTERPRETATION

Submissions made to SARS and current calls for comment

No new submissions were made in the week of 16 – 22 January 2025.

Legislative interpretation calls for comment

SARS has issued the following call for comment:

Due date	Draft legislation	Comment to
15/02/2025	Draft Interpretation Note 54 (Issue 3) – Deductions not allowed – Corrupt activities fines and penalties and fruitless and wasteful expenditure	policycomments@sars.gov.za

Explanatory Note:
This Note provides guidance on the meaning and scope of section 23(o), which prohibits the deduction of expenditure incurred in respect of corrupt activities, fines or penalties imposed due to an unlawful activity, or any expenditure constituting "fruitless and wasteful expenditure" as defined in section 1 of the Public Finance Management Act, 1999. Date published: 20 January 2025
Progress: The SAIT Tax Technical team will be submitting commentary in respect of this draft legislation. Members who wish to submit commentary may reach out to ksesana@thesait.org.za by no later than 3 February 2025.

Legislative counsel publications

Publication of updated SARS interpretation note 53

This Interpretation Note provides guidance on the application of section 23A of the Act. Section 23A restricts the deduction of specified capital allowances for lessors on certain assets, including machinery, plant, aircraft, or ships ("affected assets"). It limits these deductions to the lessor's taxable income derived from the letting of these assets, excluding the capital allowances.

Any disallowed allowances are carried forward to the following year and can only be deducted against future net rental income from the affected assets. These capital allowances are ring-fenced and cannot be applied to other taxable income.

Members are encouraged to study the full details pertaining to this IN 53 (Issue 4) here. Consequently, Issue 3 of this publication has been archived.

Publication of Issue 9 of the Guide to the Urban Development Zone (UDZ) Allowance

South Africa, like many countries, faces significant challenges with urban decay in its impoverished areas, where crumbling infrastructure and deteriorating living conditions are prevalent. In response, the government introduced a tax incentive in 2003 under Section 13quat to encourage investment in the regeneration of inner-city areas, known as Urban Development Zones (UDZs).

The aim of the tax incentive is to stimulate private sector involvement in the construction and improvement of both commercial and residential properties, including low-cost housing. Currently, 15 cities in South Africa feature 16 designated UDZs, strategically located in areas with high population density and existing urban transport infrastructure, such as buses, trains, and taxis.
The tax incentive allows investors to claim accelerated depreciation on qualifying properties within these zones, reducing their taxable income. The primary objectives of this initiative are to combat urban decline, attract investment in key urban areas, and promote economic growth, all while improving the living conditions in these distressed regions. By encouraging development in areas that are well-connected and primed for growth, the policy aims to foster sustainable urban renewal and create more vibrant, liveable cities.

To assist and educate taxpayers on this allowance, SARS has published the *Guide to the Urban Development Zone Allowance (Issue 9)*, which is intended to serve as a general guide about the UDZ allowance provided for in Section 13quat of the Act. This guide is not intended to delve deeply into the technicalities and legalities, but rather to provide a quick, easy-to-follow reference for potential investors.

Members are reminded that the National Treasury is reevaluating the efficacy of this tax incentive. The objective of the survey is to collect data that will assist in evaluating the effectiveness of the UDZ tax incentive in achieving its objectives. Data sourced from the survey will be used to inform future tax policies, particularly regarding whether to continue the incentive beyond its sunset date. If it continues, the survey will help assess whether the current policy design is still appropriate. Decisions on the incentive's future will be based on evidence of its value and impact to date.

Reminder regarding publication of the updated tables of interest rates

On 7 January 2025, the following tables of interest rates were updated:

Table	Description
Table 1	Interest rates on outstanding taxes and interest rates payable on certain refunds of tax
Table 2	Interest rates payable on credit amounts

Published court cases

No court cases were published the week of 16 – 22 January 2025.

Other SARS publications and announcements

No other legislative publications or announcements were made by SARS during the week of 16 – 22 January 2025.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

SARS to commemorate International Customs Day

SARS Commission, Mr. Edward Kieswetter, will lead the commemoration of International Customs Day (ICD) 2025. This year, SARS will mark ICD under the theme 'Commitment to enhancing efficiency, security, and prosperity as our core focus,' as set by the World Customs Organization.

International Customs Day is observed globally on 26 January to honour the first session of the Customs Co-operation Council, which was held on this date in 1953.

The virtual event details are as follows:

Date: Friday, 24 January 2025
Time: 10:00 – 13:00
Platform: YouTube