TAXPRACTICE

WEEKLY HIGHLIGHTS

WEEK OF 23 - 29 January 2025
(Issue 03 -2025)

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TOP STORIES

Getting your VAT registration application right

On Monday, 27 January 2025, the SARS Western Cape region hosted a 'VAT Registration Requirements' workshop to assist tax practitioners in understanding the requirements for VAT registrations and to provide insight into some of the main reasons for registration application rejections.

Interestingly, the overall tax compliance of both the applicant and the public officer is also considered. Administrative penalties may already apply for non-compliance with a specific tax type. However, if an applicant is found to be non-compliant, this could still result in the rejection of the VAT application.

While the Tax Administration Act, No. 28 of 2011 does not explicitly require that a public officer be tax compliant to serve in this capacity, if their personal tax affairs are not in order, it could still result in the rejection of the VAT registration application.

For more information, read here.

CIPC initiated deregistration: What does this mean for directors and public officers?

On 17 January 2025, the Companies and Intellectual Property Commission (CIPC) announced that it had initiated a large volume of company deregistrations due to ongoing low levels of compliance with Annual Returns, Beneficial Ownership, and other obligations under the Companies Act.

The Commission stressed that directors must comply with the provisions of the Companies Act, even if their companies are dormant, as dormant companies pose a risk of being used for money laundering, terror financing, and other criminal activities.

Find out what this means for directors 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.

Approximately 500 – 1500 words

MEMBERS' DIGEST

The Conduit Conundrum: Thistle Trust v. SARS in the Apex Court

Written by: Mbonisi Ndlovu,
SAIT Affiliate Member

In the complex relationship between trust management and taxation, strategic restructuring has facilitated legal compliance while preserving wealth. The *Thistle Trust v Commissioner for the South African Revenue Service* case represents a significant Constitutional Court decision in South Africa concerning the application of the conduit principle to capital gains tax within tiered trust structures.

The Thistle Trust ("**Trust**"), is an *inter vivos* discretionary trust that served as a beneficiary to multiple trusts within the Zenprop Group, a property development group. Between the 2014 and 2016 tax years, Zenprop disposed of assets and transferred the resulting capital gains to the Trust, which then distributed them to its beneficiaries. After a tax audit, SARS contended that the capital gains should be taxed within the Trust, arguing that the conduit principle should not apply to the capital gains at the trust level. The Commissioner for the South African Revenue Service ("**SARS**") raised an assessment against the Trust for those years for capital gains that the Commissioner contended had accrued to the Trust, imposed a 50% understatement penalty, and required the Trust to pay interest on the outstanding tax liability.

This case highlights key issues concerning tax liability, trust structures, and the application of the conduit principle. The conduit principle traditionally enables income to flow through trusts to beneficiaries without changing its nature for tax purposes. The court's decision has significant implications for trust and tax planning, especially for high-net-worth individuals utilising tiered trusts.

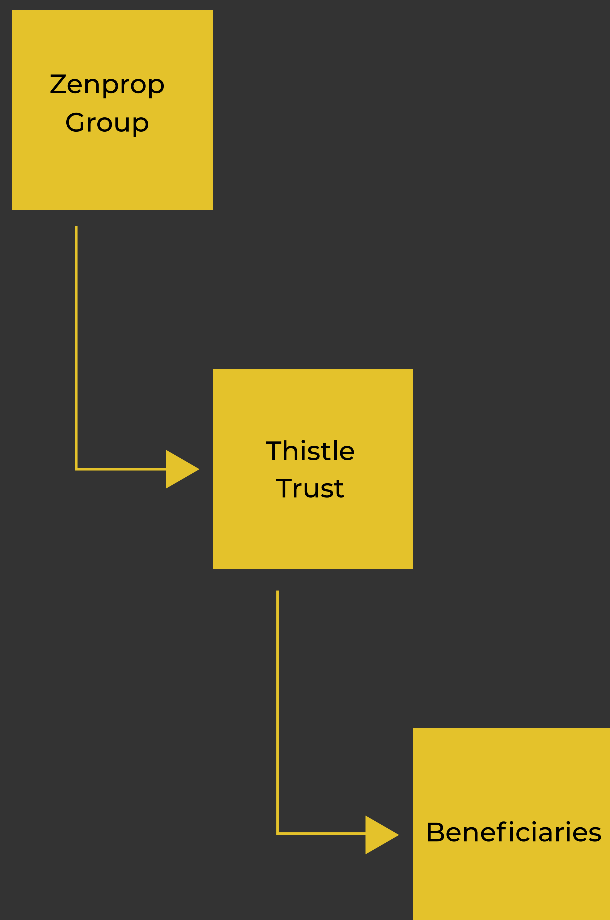
The primary issues in this case were:

1. Does the conduit principle apply to capital gains tax within tiered trust structures?

How should sections section 25B and paragraph 80 of the Eighth Schedule of the Income Tax Act 28 of 1962 ("**Act**"), be interpreted concerning tiered trust structures?

2. Should capital gains tax be imposed on the Trust or on the beneficiaries who ultimately receive the capital gains?

The below structure is a visual representation which demonstrates the flow of capital gains through the tiered trust structure.



- Zenprop Group (Trust Level 1) represents the initial trust that disposes of assets and generates capital gains.
- Thistle Trust (Trust Level 2) is the intermediary trust that receives the capital gains from Zenprop and is involved in distributing them.
- Beneficiaries (Trust Level 3) are the individuals who ultimately receive the capital gains from the Thistle Trust.

Tax Court

The initial hearing took place in the Tax Court, where the Trust argued that the conduit principle applied, allowing capital gains to pass through the trust to beneficiaries without changing their tax character. The Tax Court sided with the Trust, holding that section 25B of the Act allowed the application of the conduit principle and that the capital gains tax should be assessed in the hands of the ultimate beneficiaries rather than the Trust. This judgment relied primarily on previous case law that established the conduit principle as a robust aspect of South African tax law.

Supreme Court of Appeal ("SCA")

SARS appealed to the SCA, which overturned the Tax Court's decision. The SCA ruled that the conduit principle should not apply to capital gains in a multi-tiered trust structure. It found that paragraph 80(2) of the Eighth Schedule of the Act specifically limited the conduit principle's application, such that the Trust, as the first beneficiary trust, was liable for the capital gains tax. According to the SCA, the legislative framework did not allow the principle to extend beyond the initial trust.

Constitutional Court

The Trustees of the Trust were not in agreement with this decision. The matter then ascended to the Constitutional Court where the justices were divided. There was a differing judicial perspective. The majority opinion, delivered by Justice Chaskalson, upheld the SCA's judgment, finding that paragraph 80(2) of the Eighth Schedule of the Act restricted the application of the conduit principle to capital gains that arose directly within the initial trust.

The majority concluded that the amendments made in 2008 and 2020 to the Act indicated a legislative intent to prevent multi-tiered trust arrangements from avoiding capital gains tax liability. However, the minority opinion, led by Justice Bilchitz, argued that the common law conduit principle should be allowed to flow through multiple trust layers, thereby supporting the view that tax should be assessed at the level of the beneficiaries.

Analysis

The judicial disagreement revolves around how to interpret tax laws, particularly regarding the role of common law principles. On the one hand, the majority took a textualist approach, focusing on the specific wording of legislative amendments, which they argued limited the conduit principle. On the other hand, the minority favoured a purposive approach, advocating for an interpretation that aligns with the broader historical and equitable purposes of the conduit principle.

Although the decision cannot be challenged, this ruling raises several questions and reveals underlying complexities:

- The court's restriction on applying the conduit principle to capital gains raises questions about whether the tax liability reflects the spirit of the conduit principle, which aims to tax income in the hands of its ultimate recipient. Is it equitable for beneficiaries to avoid capital gains tax while the trust bears the full burden?
- The court referenced legislative changes made in 2008 and 2020 to restrict the conduit principle's application. However, it remains unclear whether these amendments truly aimed to prevent all tiered trusts from applying the principle to capital gains. How does this interpretation align with the broader legislative goal of taxing trusts in a manner that reflects economic substance rather than form?
- The decision challenges the common strategy of using tiered trusts to manage tax liabilities. Does this judgment restrict the flexibility that trusts offer in tax planning?

The ruling reflects a careful examination of legislative intent and statutory interpretation, emphasising that trusts like Thistle Trust may not transfer capital gains tax liability beyond the first level of trust beneficiaries.

For taxpayers, this judgment emphasises the importance of careful tax planning and compliance when dealing with complex trust arrangements. In light of the Court's interpretation, trustees must be mindful of how they distribute capital gains to ensure that they are in line with the relevant legislative framework. This decision indicates that trust structures previously used to reduce tax liabilities may need to be reconsidered, particularly in situations where capital gains were meant to pass through multiple layers of trusts.

In response to this ruling, taxpayers should reassess their trust configurations and ensure that capital gains are properly accounted for at the correct trust level. This proactive approach will help prevent unanticipated liabilities and ensure compliance with the current tax laws governing capital gains in trusts.

In light of this landmark ruling, those involved with tiered trust structures for managing capital gains should tread carefully. This decision signals a shift toward stricter tax scrutiny on multi-layered trusts, particularly when it comes to capital gains. Now more than ever, it is crucial to reevaluate your trust strategies to ensure you are not caught off guard by unexpected tax liabilities. Staying informed on future legislative updates is essential, as even subtle changes could further reshape how the conduit principle applies to trust taxation

PART A: COMPLIANCE & SARS OPERATIONS

SAIT-SARS 'ON-THE-GROUND' ENGAGEMENT

Clarification on supporting documents upload – Avoid the "No Active Cases" message

Over the past few weeks, SAIT has received several queries regarding the 'Supporting Documents Upload' section on the SARS Online Query System (SOQS). Members have encountered difficulties, particularly when attempting to add additional documents to existing cases, such as Registered Representative case activations. A common frustration is the appearance of the message "no active cases".

The issue typically arises when individuals mistakenly enter their personal details (such as their income tax number) instead of the company's details. To locate the correct case number, members must input the company's registration number, company income tax number, and trading name into the query case form. When personal details are used instead of the company's information, the system is unable to locate the case number, triggering the "no active cases" message.

SAIT's consultants have tested this process and can confirm that entering the correct company details resolves the issue, allowing the case number to be located. Every member we have assisted with this adjustment has reported successful results.

Deregistration of tax types and the submission of nil returns for compliance purposes

A key requirement for deregistering a tax type is that the taxpayer must be fully compliant—ensuring all tax returns are submitted and all outstanding debts are settled—before the tax type can be deregistered.

Historically, the 90-business-day turnaround time for deregistration cases has been far exceeded. As a result, by the time the case is being considered, additional tax returns may have become due or remain outstanding, thus impacting the taxpayer's compliance status. In response, many taxpayers and tax practitioners opt to submit nil-value returns to maintain compliance until the deregistration process is finalised.

Taxpayers and tax practitioners are urged to refrain from this practice. This is because, although a deregistration case may not be finalised, SARS places the tax number under 'suspense' pending the outcome of the compliance audit. Submitting a nil value return during this period reactivates the tax type, returning it from suspended to active status. In these circumstances, the tax returns then become 'required' again, complicating the deregistration process.

Unfortunately, SARS doesn't proactively inform taxpayers when a tax type is placed under suspense. Therefore, before submitting any nil value returns, taxpayers and tax practitioners are urged to check the status of the tax type on the RAV01 form, under 'My Tax Products'.

Illustrative examples:

Active tax type:

Income Tax		
Reference No.	Account no.	Status
	N/A	ACTIVE

Suspended tax type:

Income Tax		
Reference No.	Account no.	Status
		SUSPENDED

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Reminder of the 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.

Reminder on the bank verification backlog submission to SARS

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 requests for remission of penalties
5. Delays in finalising registered representative cases.

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

On Monday, 27 January 2025, the SARS Western Cape region hosted a 'VAT Registration Requirements' workshop to assist tax practitioners in understanding the requirements for VAT registrations, and to provide insight into some of the main reasons for rejecting registration applications.

When considering a VAT registration application, SARS evaluates a variety of factors:

- Authentication of applicant
  The process begins with authenticating the requestor by verifying whether the applicant is authorised to make the application, either as a public officer or a tax practitioner. SARS emphasised the importance of submitting a duly signed power of attorney and certified ID copies of both the tax practitioner and the public officer. If any of these documents are missing, the application will automatically fail authentication and be rejected.

- Proof of the vendor's business address and verification of banking details.
  The business address must align with its operations. For example, if the provided business address is for a country estate by the coast, but the business operations are in mining, there would be a disconnect between the two, and SARS would not accept that address. However, if the business operates from leased premises, a CRA01 form may need to be completed. Additionally, if the banking details linked to the income tax number are not verified, the VAT application may be rejected.

- Contractual agreements
  These will be scrutinised and SARS will verify whether all suspensive conditions stipulated in the agreement have been met.

- Tax invoices and compliance
  Submitted invoices must comply with Section 20 of the Value-Added Tax Act, No. 89 of 1991. If the invoices do not meet the necessary requirements, they will not be considered when determining taxable supplies.
  Interestingly, the overall tax compliance of both the applicant and the public officer is also considered. Administrative penalties may already apply for non-compliance with a specific tax type. However, if an applicant is found to be non-compliant, this could still result in the rejection of the VAT application. While the Tax Administration Act, No. 28

of 2011 does not explicitly require that a public officer be tax compliant to serve in this capacity, if their personal tax affairs are not in order, it could still result in the rejection of the VAT registration application.

- Verification process
  An assessor will typically contact the applicant with questions regarding the business. SARS stressed the importance of providing the contact details of the tax practitioner on the application form, rather than the vendor's own details, as vendors are often not able to answer some of the tax-related questions posed by SARS. However, should the application be approved, the vendor may update their contact details. (Although this was said in the workshop SARS does not want the practitioner's contact details to be reflected as the taxpayer's contact details.)

If all the above checks are in order, SARS typically finalises the application within 2 to 3 working days. However, applications requiring additional information or documentation may take up to 21 business days.

Any backdating of a VAT application must be done through a virtual branch appointment with valid substantiating reasons. This request cannot be made during the initial application process.

The presentation shared during the workshop will be shared will members in due course.

Upcoming RCB/SARS regional and national meetings

1. Gauteng South – 12 February 2025;
2. North West – 17 February 2025;
3. Mpumalanga – Emalahleni – 17 February 2025;
4. Gauteng North – 20 February 2025;
5. Mpumalanga – Mbombela – 21 February 2025;
6. Western Cape – 5 March 2025;
7. Limpopo – 11 March 2025;
8. Free State and Northern Cape – 10 March 2025;
9. Free State and Northern Cape – 9 June 2025;
10. Free State and Northern Cape – 8 September 2025; and
11. Free State and Northern Cape – 10 November 2025.

<u>Other meetings of interest</u>

1. RCB Forum meeting- 4 March 2025;
2. RCB Forum meeting- 3 June 2025;
3. RCB Forum meeting tentatively scheduled for 16 September 2025;
4. 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).

Key operational news

CIPC initiated deregistration: What does this mean for directors and public officers?

On 17 January 2025, the Companies and Intellectual Property Commission (CIPC) announced that it had initiated a large volume of company deregistration's due to ongoing low levels of compliance with Annual Returns, Beneficial Ownership, and other obligations under the Companies Act. The Commission stressed that directors must comply with the provisions of the Companies Act, even if their companies are dormant, as dormant companies pose a risk of being used for money laundering, terror financing, and other criminal activities.

The consequences of deregistration for non-compliant businesses are severe. These include directors being personally liable for the company's debts, frozen bank accounts by the relevant banks, service providers refusing to deliver services, and creditors declining to pay, as the business no longer legally exists.

Although businesses can apply for reinstatement after final deregistration, only those that can provide evidence of economic activity or other economic value at the time of final deregistration will be considered for reinstatement. The reinstatement process is cumbersome, requiring proof of economic activity along with the relevant form.

Businesses are advised to check their company status via Bizportal or e-Services. If the current business status is under the AR deregistration process, businesses must urgently submit all outstanding Annual Returns and Beneficial Ownership Declarations to avoid final deregistration and its consequences.

Reminder that 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.

Other SARS and related operational publications and announcements

- **27 January 2025:** SARS announced that they are preparing to implement enhancements to the Tax Directives process as indicated in the IBIR-006 Tax Directives Interface Specification Version 6.708. The trade testing dates are still to be confirmed, but the software is scheduled for implementation in April 2025. SARS will communicate the exact dates for trade testing and the implementation date closer to the time.

  Testers are strongly advised to review the IBIR-006 before proceeding with testing.

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 23 – 29 January 2025.

Key tax practitioner news

No other tax practitioner news was published from 23 – 29 January 2025.

Government & stakeholder newsletters

No government and stakeholder newsletters were published during the period 23 – 29 January 2025.

Other tax practitioner access and functionality publications and announcements

- **23 January 2024:** SARS announced that it would be conducting planned upgrades to the eFiling platform on Friday, 24 January 2025, from 18:00 to 22:00. During these times, the digital platform may have been unavailable.

PART B – LEGISLATION & POLICY

LEGISLATION, INTERNATIONAL AGREEMENTS & POLICY

Tax policy & international agreements

National Legislation

No new National legislation was published in the week of 23 –29 January 2025.

Notwithstanding that, members are reminded 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 submissions relating to tax policy and legislation were made in the week of 23 – 29 January 2025.

Reminder on 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.		

Publication of Interpretation Note 136

SARS has published interpretation note 136 that provides clarification on the interpretation and application of PBA 9. This note specifically addresses the provisions outlined in PBA 9, which is detailed in paragraph 9 of Part I. PBA 9 pertains to the administration, development, coordination, or promotion of sport or recreation activities in which participants take part on a non-professional, leisure-based basis. Essentially, it refers to situations where individuals engage in sports or recreational activities not as a career or for monetary gain, but as a pastime or hobby. This guidance helps define the scope and application of PBA 9, ensuring that organisations and entities involved in such activities understand the requirements and standards for compliance.

Essentially, an organisation carrying on PBA 9 must be approved by the Commissioner as a PBO and must, on application and after obtaining such approval, submit of its annual income tax return (IT12EI), satisfy the Commissioner that:

- its sole or principal object is the carrying on of the administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime; and
- the receipts and accruals derived by the organisation carrying on PBA 9 meet the requirements of section 10(1)(cN).

It is essential to remember that a PBA 9 organisation bears the burden of proving that it complies with the requirements relative to the approval as a PBO carrying on PBA 9 and must retain the necessary evidence to support the view taken. The burden of proof may be satisfied through the submission of supporting evidence by the organisation, provided that such evidence is reasonable. Compliance with the requirements of PBA 9 will be determined based on the specific facts and circumstances of each individual organisation.

Members are encouraged to study this interpretation note 136 for further and full detail.

Reminder regarding the 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.

Reminder regarding the 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.

Published court cases

The following Tax Court judgment has been published by SARS:

Date of delivery	Case Reference	Applicable legislation
31/07/2024	*SARSTC IT 46591*	Tax Administration Act, 2011
Keywords: Whether SARS has shown good cause for its default – whether the following factors militate in favour of default judgment or condonation: i. Prospects of success ii. Balance of prejudice		

Other SARS publications and announcements

No other legislative publications or announcements were made by SARS during the week of 23 – 29 January 2025.

OTHER MATTERS OF INTEREST FOR A TAX PRACTICE

Finance Ministry invites South Africans to share their suggestions on the budget

Finance Minister, Enoch Godongwana will deliver the National Budget Speech in February 2025. The budget allocation aims to strike a balance between growing the economy and supporting the vulnerable amid limited resources.

Members of the public are invited to submit suggestions on inter alia:

- **Tax revenues:** Ideas for improving tax collection, compliance, and fairness.
- **Government spending priorities:** Recommendations for allocating resources appropriately.
- **Addressing a large budget deficit:** Proposals for reducing the deficit, including cost-cutting or revenue-generating measures.
- **Energy funding solutions:** Suggestions for funding renewable energy projects and improving energy efficiency

Interested members may make submissions to the National Treasury using this link: 2025 Budget Tips. Kindly ensure that contributions are clear and concise, limited to a maximum of 300 words.

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