

Standing Committee on Finance

Public Hearings

20 September 2023

Presented by:

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Pieter Faber



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TABLE OF CONTENTS

01 Policy matters

02 Technical amendments

03 Matters not in the Bills



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POLICY MATTERS

Capacitation of NT

Annual feedback process



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CAPACITATION OF NATIONAL TREASURY

The centre of fiscal policy and legislation

CONCERNS

❑ 2022 ANNUAL REPORT:

- ❑ 151 Vacancies
- ❑ Increase in vacancy rate to 16,2% for Senior Managers
- ❑ SAICA letter of concern to Minister of Finance 7 July 2023

❑ TAX & FINANCIAL POLICY

- ❑ Acting head since October 2022
- ❑ Vacancies in key positions
 - ❑ Chief Director: Legal and Tax Policy design
 - ❑ Chief Director: Economic Tax Analysis
 - ❑ Deputy Director Corporate law

❑ **IMPACT: DECREASED QUALITY OF LEGISLATION**

- ❑ Marked decline in quality with repetition of content and incorrect referencing

RECOMMENDATION

Review Treasury Human Capital
capacitation model

Review and address causes for
vacancies, especially at senior
manager level

QC procedures for Bills, including
errors identified by stakeholders in
Annexure C process

ANNUAL FEEDBACK ON ANNEXURE C

Transparent public consultation in a participative democracy

CONCERNS

☐ RAISED WITH SCOF 2022 AND BEFORE

- ☐ SCoF requested Treasury to provide feedback
- ☐ **Welcomed** public engagement held on 3 November 2022
- ☐ Addressed many but not all matters
- ☐ Some policy matters not specifically clarified
- ☐ No public record of responses

☐ THE MINISTER WILL DECIDE...

- ☐ What has the Minister seen or not seen and decided on?
- ☐ No public record of responses or discussions

RECOMMENDATION

Annexure C feedback should be standing calendar item after Budget Review

Public record / document should be issued with responses on technical and policy matters OR just recording of session to reduce admin burden on NT/SARS



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TECHNICAL MATTERS

TALAB - Auto assessments

TALAB - Tax Exempt entities directors' disqualifications

TALAB - Foreign employer registration

TLAB - Renewable energy – Enhanced deduction

TLAB - Deduction of interest expenditure

TLAB - CFC & outsourcing



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AUTO ASSESSMENTS

Good intention - unfair administrative practice

SARS RESPONSE TO SAICA CONCERNS

2020

2021

“Auto assessment is only a proposal and only becomes an assessment in the legal sense once accepted by taxpayer” 27 July 2020

“SARS will issue Estimate Assessment for those who failed to accept/reject 2020 auto assessment” 19 Feb 2021

SIMPLIFYING TAXPAYER EXPERIENCE FOR INDIVIDUALS

SARS Auto-Assessment functionality strives to make filing easy for millions of taxpayers:

- 3.4 million taxpayers initially selected for auto assessment, and
 - 9 out of 10 taxpayers (2.8 million, or 91%) taxpayers accepted the auto assessment results presented by SARS - enabled through 3rd Party Data and AI
 - 1 million of the auto assessed were issued with an estimated assessment largely because they earned below the R500k pa threshold (not required to file; habitual branch filers) ie. No effort required on their part at all
 - a number of taxpayers specifically excluded as they had a change in circumstances to their eligibility for auto assessment – taxpayers who had changed to a Provisional Taxpayer; Taxpayers that claimed Home Office Expenses.

From the entire population of 5,3 million who filed PIT returns:

- 93% assessed in under 5 seconds
- 85% received their refunds within 72 hours
- R19 billion in refunds already paid to 1.67 million taxpayers

2022

2023

“We are confident it's an estimate assessment under section 95 TAA”

2020 TALAA pre-empted this SARS change in “view” but does not correct the fundamental flaw

SAICA CONCERNS EXPRESSED INCLUDE...

- SAICA submission to SARS 24 July 2020
- SAICA submission and NT TALAB workshops 10 Sept 2020
- SAICA SCoF submission 2022



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AUTO ASSESSMENTS

Good intention - unfair administrative practice

ESTIMATE ASSESSMENTS – PUNITIVE SECTION

- ❑ Section 95 is designed to address a situation to force a non-compliant taxpayer to become compliant
- ❑ Section 95 TAA departs from the usual assessment and dispute processes

2020 TALAA
“Reduced
assessment” does
not fix the
fundamental flaw

ESTIMATE PROCESS

- Taxpayers in non-compliant
- SARS estimates tax liability
- SARS carries onus of proof & must provide grounds of assessment
- Taxpayer prohibited from objecting until he/she becomes compliant AND only has 40 days otherwise permanently barred
- Taxpayer submits return/information
- SARS must decide on additional/reduced
- Taxpayer can then dispute after this decision exercised

NORMAL PROCESS

- CSARS sets date for submission of returns
- Taxpayer submits return and is compliant
- SARS can audit or verify return
- SARS assesses return
- Taxpayer entitled to request reasons & immediately dispute any incorrect assessment
- Taxpayer carries onus of proof



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AUTO ASSESSMENTS

The devil is in the data

CONCERNS

❑ SCOPE OF PROBLEM

- ❑ Taxpayers think they don't have to check
- ❑ SARS will only know scope of problem on review of all auto assessment i.e. relies on taxpayers to identify errors
- ❑ SARS already non-compliant with s95 & s96(2)

❑ INCORRECT TAXPAYERS SELECTED

- ❑ Provisional taxpayers
- ❑ Taxpayers with known historical deductions

❑ THIRD PARTY DATA ERRORS/DELAYS

- ❑ SARS Estimates incorrect
- ❑ Taxpayers cannot correct incorrect data on return
- ❑ SARS forces taxpayers to resolve its compliance enforcement obligations

❑ SARS DATA ERRORS

- ❑ SARS' system has created data errors (e.g. doubling of interest and rentals) in more than 1 year

TALAB2023 amendment seeks to rectify this, hence back dated

Sars wants taxpayer to grin and pay up for ghost account

Incorrect data on auto-assessment leads to tax nightmare.



DSiv Channel 403

Monday, 18 September 2023



TOP STORIES VIDEOS NEWS BUSINESS SPORT OPINION

AVBOB Hub

SARS | CONCERNS AND COMPLAINTS OVER AUTO ASSESSMENTS

Wednesday 02 August 2023 - 20:30pm



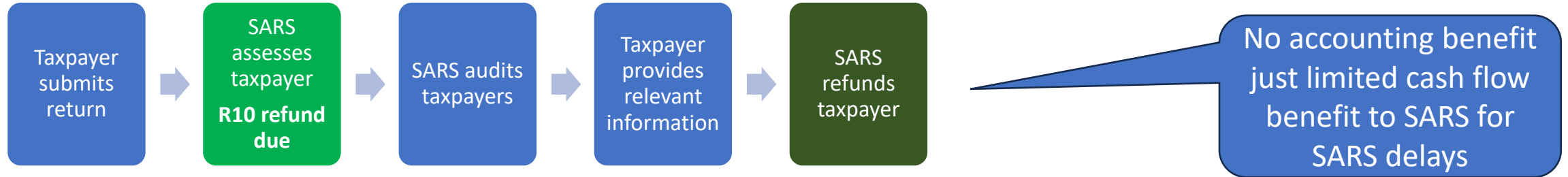
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AUTO ASSESSMENTS

Cash flow changes vs Cash accounting....

NORMAL ASSESMENT PROCESS



AUTO ASSESSMENT PROCESS



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AUTO ASSESSMENTS

What can be done?

RECOMMENDATION

SARS & NT should properly consult and implement an appropriate auto assessment section in the TAA

SARS should report back to SCoF on how it will address data errors in SARS and with third parties to lessen burden on taxpayers



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TAX EXEMPT ENTITIES

Overburdened tax-exempt entities

General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 (English / Afrikaans)

the Trust Property Control Act, 1988,

- by inserting definitions of “accountable institution” and “beneficial owner”;
- by imposing certain requirements on trustees;
- by specifying matters that would disqualify a person from being appointed or continuing to act as a trustee;
- by clarifying that a person who was appointed outside the Republic as trustee must be authorised by the Master to act as trustee;
- by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee;
- by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts;
- by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and
- by specifying certain offences;

the Nonprofit Organisations Act, 1997,

- by requiring registration of specified nonprofit organisations in terms of the Act;
- by enabling the Nonprofit Organisations Directorate, in order to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state;
- by clarifying the scope of powers of the director in relation to the registration and cancellation of registration of nonprofit organisations, and in respect of the power to require amendments to be effected to the constitution of a nonprofit organisation;
- by requiring registered nonprofit organisations to submit prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to the director;
- to require prescribed information relating to the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations to be included in the register that the director must keep, and by providing for access to that information;
- by providing for grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a registered nonprofit organisation;
- by providing for the removal of an office-bearer; and
- by providing for certain contraventions;



• 1 March 2023 – Further information required in terms of section 18A(2)(a)(vii) of the Income Tax Act

The following further information must be included on a receipt issued in terms of section 18A(2)(a) of the Income Tax Act:

- Donor nature of person (natural person, company, trust, etc.);
- Donor identification type and country of issue (in case of a natural person);
- Identification or registration number of the donor;
- Income tax reference number of the donor (if available);
- Contact number of the donor;
- Electronic mail address of the donor;
- A unique receipt number; and
- Trading name of the donor (if different from the registered name).

[Notice 3082](#) was published in the *Government Gazette* 48104 on 24 February 2022.

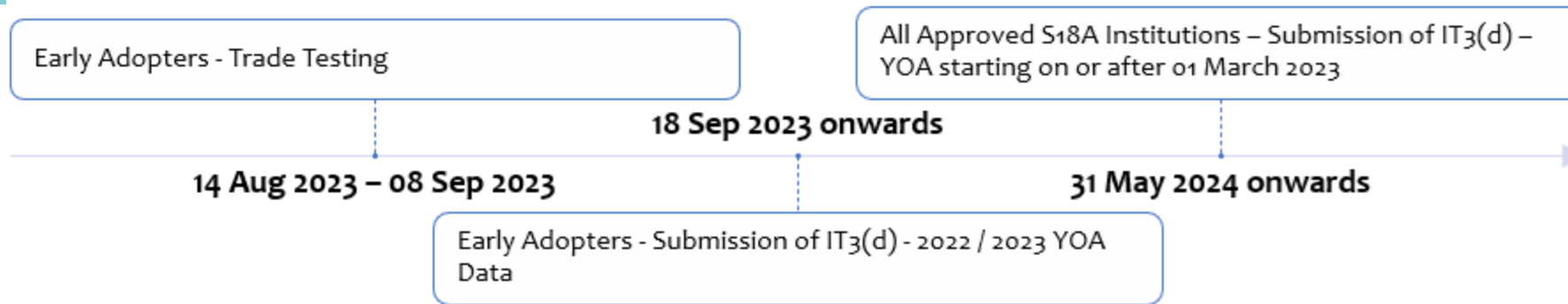
• 9 February 2023 – Business Requirement Specification for the implementation of the Submission of Section 18A receipts issued (IT3(d) project)

The [IT3\(d\) Business Requirement Specification \(BRS\) document](#) has been published which sets out the manner in which S18A third party information should be submitted to SARS and in preparation for the early adopters phase in April 2023.

Please feel free to send queries and comments regarding the BRS and implementation of the IT3(d) to TFISegment@sars.gov.za.

TAX EXEMPT ENTITIES

Over-burdened tax-exempt entities



SAICA MEMBER TESTING AND FEEDBACK FROM +- 550 ENTITIES

- ☐ *“It is highly unlikely they will be ready”*
- ☐ *“Most s18A receipts are manually issued and they will all struggle with the HTTP file submission format”*
- ☐ *“PBO’s are struggling with the donor community”*

TAX EXEMPT ENTITIES

Overburdened tax-exempt entities – Fiduciary qualification checks

PROPOSAL

1. Check **“Fiduciary Person”** not disqualified into of Trust Property Control Act, Companies Act and NPO Act

CONCERNS

1. **“Fiduciary Person”** means different groups people (i.e. scoping) for different types of tax-exempt entities and can also include management, not just “directors”
2. They just can’t do all of this in this short time frame due to government’s lack of planning
3. We are merely making these entities non-compliant or financially unviable

South Africa		COMPANIES ACT 71 OF 2008
Trust Property Control Act, 1988		(English text signed by the President)
Act 57 of 1988		[Assented To: 8 April 2009] [Commencement Date: to be proclaimed]
ACT		as amended by:
<p>Disqualification and removal of office-bearers</p> <p>25A. (1) A person is disqualified from being an office-bearer of a registered nonprofit organisation if the person—</p> <p>(a) is an unrehabilitated insolvent;</p> <p>(b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);</p> <p>(c) is prohibited in terms of any law to be a director of a company;</p> <p>(d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;</p> <p>(e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount prescribed in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—</p> <p>(i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</p> <p>(ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or</p> <p>(iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011); or</p> <p>(f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution contemplated in that subsection; or</p> <p>(g) is an unemancipated minor, or is under a similar legal disability.</p>		<p>person is disqualified to be a director of a company if-</p> <p>i) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or</p> <p>ii) subject to subsections (9) to (12), the person-</p> <p>(i) is an unrehabilitated insolvent;</p> <p>(ii) is prohibited in terms of any public regulation to be a director of the company;</p> <p>(iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or</p> <p>(iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence-</p> <p>(aa) involving fraud, misrepresentation or dishonesty;</p> <p>in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or</p> <p>under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).</p>

TAX EXEMPT ENTITIES

Overburdened tax-exempt entities

RECOMMENDATION

FATF delays are not the tax-exempt sector's fault and timing should be reconsidered

SARS and NT should report to SCoF on the status of implementation in the sector and key hurdles

SARS and NT should provide more support and take mitigating actions to reduce compliance burden



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FOREIGN EMPLOYERS OF RESIDENT INDIVIDUALS

Paragraph 2(1) Fourth Schedule to the Income Tax Act

CURRENT SITUATION

- ☐ Resident employers of tax residents must register for PAYE and deduct from employee's remuneration.
- ☐ Non-resident employers do **NOT** have to register.
- ☐ **BUT** their resident employees must pay provisional tax to SARS.

PROBLEM

- ☐ **SA resident employees in SA** not declaring income from foreign employers.



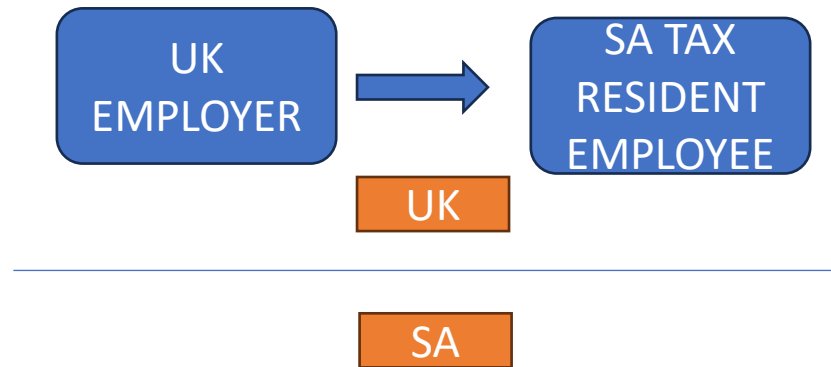
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Problem – These employers will now have to register in SA

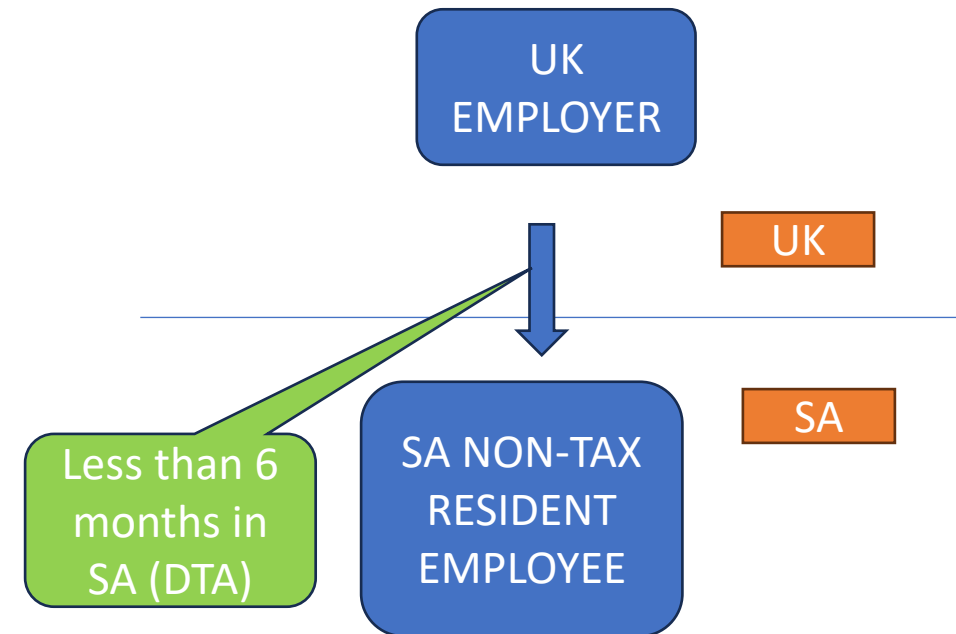
SCENARIO 1 - OUTBOUND SA EMPLOYEE



CONCERN

- Overly broad application

SCENARIO 2- INBOUND FOREIGN EMPLOYEE



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FOREIGN EMPLOYERS OF RESIDENT INDIVIDUALS

Burden of tax registration in SA

WHAT DOES THIS MEAN FOR FOREIGN EMPLOYERS?

Register
with CIPC

Register for
PAYE

De-register for
PAYE when
employee
resigns

Open local
bank
account

Register for
e-Filing

Submit
monthly
EMP201s and
bi-annual
EMP501s

**Even if only one SA
resident employee for a
limited time**

CONCERN

- Administratively intensive



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FOREIGN EMPLOYERS OF RESIDENT INDIVIDUALS

Para 2(1) Fourth Schedule to the Income Tax Act

RECOMMENDATION

Far-reaching amendment. Postpone for a year. Extensive public consultation needed.

EXCLUDE foreign employers of SA tax resident employees living and working outside RSA.

De minimus exclusion for a foreign employer whose non-resident employee is physically (temporarily) in the Republic for less than 183 days in a year of assessment in respect of remuneration paid to that foreign employee.



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RENEWABLE ENERGY - ENHANCED DEDUCTION

Section 12BA Income Tax Act

PROPOSAL

- ❑ For 2 years: 1 March 2023 to 1 March 2025
- ❑ 125% deduction on cost incurred on assets acquired to be used to generate renewable energy (i.e., solar, wind, hydropower, biomass).
- ❑ Applies where owner uses assets or rents them out for use by lessee.

CONCERNS

- ❑ Wording is unclear on whether batteries and inverters are included or not.
- ❑ Two years is too short for a business incentive.
 - ❑ There are many projects 'in the pipeline' awaiting regulatory approval.
 - ❑ These will miss out on the incentive.

RECOMMENDATION

Extend incentive by at least one more year

Include 'batteries' and 'inverters' in the wording of the amendment.



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THE DEDUCTION OF INTEREST EXPENDITURE

New section 11G/Practice Note 31

CURRENT SITUATION - PRACTICE NOTE 31

Practice Note: No. 31 – 3 October 1994
Income Tax: Interest paid on moneys borrowed

General rule: Expenses are deducted against income of a taxpayer *carrying on a trade*.

Includes individuals, trusts, partnerships, etc.

No trade = no tax deduction

Person who borrows money from a bank and on-lends to earn interest income is generally considered as not carrying on a trade.

No tax deduction on interest expenditure incurred on funds borrowed.

SARS introduced Practice Note 31 in 1994 to allow for an exception to this rule.



South African Revenue Service

WITHDRAWAL OF PRACTICE NOTES 31 OF 1994 AND 37 OF 1995

It is the intention of SARS to withdraw Practice Note (PN) 31 of 1994 "Interest paid on Moneys Borrowed" and Practice Note (PN) 37 of 1995 "Deduction of Fees Paid to Accountants, Bookkeepers and Tax Consultants for the completion of Income Tax Returns".

This enables tax neutral finance arrangements

BUT



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THE DEDUCTION OF INTEREST EXPENDITURE

New section 11G

PROPOSAL

- ☐ Introduction of new section 11G to allow for a deduction of interest expenditure incurred in the production of interest income
- ☐ No trade required.
- ☐ Only applies to companies within the same group.
- ☐ No s11G deduction if taxpayer is individual/trust/partnership.

Effective date: 1 January 2024 and applies to tax years beginning on or after.



REPUBLIC OF SOUTH AFRICA

DRAFT EXPLANATORY MEMORANDUM

ON THE

DRAFT TAXATION LAWS AMENDMENT BILL, 2023



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THE DEDUCTION OF INTEREST EXPENDITURE

New section 11G/Practice Note 31



EXAMPLE

1. You start a small business.
2. Business cannot obtain funding.
3. You borrow R100 000 loan from bank at 7% interest (R7 000) per annum against your personal assets.
4. You lend this money to your small business at 7% interest (R7 000) per annum.

Unfair?

PRACTICE NOTE 31

Business owner	
Interest income	R7 000
Less: Interest expense	R7 000
Taxable income	R0
Tax rate @ 10%	Zero

SECTION 11G

Business owner	
Interest income	R7 000
Less: Interest expense	R0
Taxable income	R7 000
Tax rate @ 10%	R700



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THE DEDUCTION OF INTEREST EXPENDITURE

New section 11G/Practice Note 31

RECOMMENDATION

NT should clarify the abuse they see or perceive given PN31 has been tax neutral by design for 29 years

Section 11G should be extended to other taxpayers, besides groups of companies.

Delay effective date to apply on or after 1 January 2025.



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CONTROLLED FOREIGN COMPANIES – SECTION 9D

Exemption: Foreign Business Establishment (FBE)

NT POLICY

- ❑ CFC rules tax SA residents on profits of an ‘overseas’ foreign company controlled by such residents.

BUT such residents are not taxed on these profits where the CFC:

- Operates from a fixed place of business in foreign country and is suitably staffed/equipped for **conducting primary operations of that business**

- ❑ Known as the Foreign Business Establishment exemption.
- ❑ This rule is not meant to tax (target) a CFC’s legitimate business operations in a foreign country.

NT PROPOSAL

- ❑ Change the phrase **conducting primary operations of that business** to
- ❑ ***“perform all the important functions of that business for which the controlled foreign company is compensated”***



REPUBLIC OF SOUTH AFRICA

DRAFT EXPLANATORY MEMORANDUM

ON THE

DRAFT TAXATION LAWS AMENDMENT BILL, 2023

What is the effect of this change?



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CONTROLLED FOREIGN COMPANIES – SECTION 9D

Exemption: Foreign Business Establishment

CONCERNS

1. This proposal has far-reaching commercial implications for many multinational companies, not just fund managers
2. Changing the law now pre-empts the outcome of the court process
3. The proposals' principals do not align with other foreign jurisdictions that multinationals must compete in

■ COMPANIES / FINANCIAL SERVICES

Last throw of the dice for Coronation in dispute with Sars

Constitutional Court will hear group's application for leave to appeal against SCA multimillion-rand tax ruling

🔒 BL PREMIUM

05 SEPTEMBER 2023 - 17:55

by KABELO KHUMALO



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CONTROLLED FOREIGN COMPANIES – SECTION 9D

Exemption: Foreign Business Establishment

RECOMMENDATION

Delay proposal till after the Constitutional Court judgement

NT to collaborate with business to do a business and economic impact and international comparative study



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MATTERS NOT IN THE BILLS

Home Office expenses

Section 12H – Learnership allowance



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HOME OFFICE EXPENDITURE

No progress

CONCERNS

- ☐ Still no discussion paper from Treasury
- ☐ Does not align with the global reality as to work mobility
- ☐ Pro rata bond interest disallowed even when full pro rata capital gain taxed
- ☐ Inequitable treatment to rentals

2023 BUDGET REVIEW

TAX RESEARCH AND REVIEWS

Broadening the personal income tax base. As part of exploring the effect of remote work on the personal income tax regime, the National Treasury and SARS committed to a multi-year review of allowances. A discussion document will be released this year to outline workplace practices and policies, changes in the current environment and how different workplaces are affected by home office and travel allowance policies.

RECOMMENDATION

NT to provide discussion paper

Legislative intervention required



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SECTION 12H LEARNERSHIP ALLOWANCES

Sunset 1 April 2024

CONCERNS

- ☐ No 2023 Budget Announcement
- ☐ No discussion paper of review of effectiveness released
- ☐ Not included in 2023 NT Public Consultations
- ☐ Impact on youth employment unknown

2021 Explanatory Memorandum

II. Reasons for change

The learnership tax incentive has a current sunset date of 31 March 2022. The effectiveness of the incentive in achieving its objectives will need to be assessed before this date to determine whether it continues. In the 2021 Budget Review, the Minister of Finance announced that the incentive would be extended by a further two years beyond its current sunset date while a review is completed.

RECOMMENDATION

NT to provide discussion paper

Sunset be deferred till after NT discussion paper and public consultation



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Thank you!

Siyabonga!

Dankie!

Kea Leboha!