

Synopsis

Tax today

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A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

Through analysis of and comment on new laws and judicial decisions of interest, Synopsis helps executives to identify developments and trends in tax law and revenue practice that may affect their business.

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Taxing Times Survey 2019: Top 10 considerations if you're being audited by SARS

Whether this is the first time you have been selected for an audit, or you have undergone previous audits by the South African Revenue Service (SARS), there are a number of key actions by the taxpayer that can minimise the effort and time invested, reduce the potential for reassessment and allow you to exercise some control over the conduct of the audit.

The below sets out key aspects to keep in mind when dealing with SARS, as well as some interesting findings from PwC's recent Taxing Times Survey 2019, which resulted in 162 responses from tax functions across all industries.

1. Build a relationship with your SARS auditor

working cooperatively with the auditor to expedite the audit process may enhance the auditor's willingness to resolve issues at the audit stage rather than through a contested reassessment, especially in grey areas of the audit.

The results of the Taxing Times 2019 survey indicated that just below half of respondents believe that the newly introduced Service Charter had a positive impact on the behaviour of SARS officials.

2. Ask that requests for information be made in writing

Requests for additional information by the auditor may sometimes be received verbally during the course of your discussions or via email. Auditors should be asked to provide their request in writing in terms of the Tax Administration Act ('TAA') to ensure that there are no misunderstandings as to what specific information or documents you are being asked to provide.

Our survey indicated that the vast majority (95%) of respondents felt that the SARS requests sometimes, most of the time or always met the criteria as set out in section 46 of the Tax Administration Act No. 28 of 2011 ('the TAA').

3. Be transparent in your discussions with the auditor

You should never appear evasive or obstructive in the course of discussions with the auditor, as this may be interpreted as a failure to comply with SARS's information-gathering powers.

In terms of section 46 of the TAA, SARS may, for purposes of the administration of a tax Act in relation to a taxpayer, require the taxpayer or another person, within a reasonable period, to submit relevant material that SARS requires. SARS may require relevant material held or kept by a connected person in relation to a taxpayer located outside the Republic and failure by a taxpayer to provide such material may prevent the taxpayer from producing such material in any subsequent proceedings. A taxpayer who wilfully and without just cause refuses or neglects to provide information to SARS may be guilty of a criminal offence in terms of section 234 of the TAA.

4. Submit your responses in writing

All documentation or information should be provided to the auditor in a formal written response with specific reference to the auditor's written request.

5. Anticipate issues and concerns

In the course of regular discussions with the auditor, you may be able to get a general sense of the issues the auditor is focused on and may provide some insight as to what the general results may be. Understanding the auditor's concerns early on (during the audit) may provide you an opportunity to target your responses to ensure those concerns are effectively addressed.

Respondents in the survey indicated that investigative audits are taking longer to finalise by SARS (when compared with the Taxing Times Survey 2018) – this may be due to capacity constraints or perhaps lack of information.

6. Respond to queries on a timely basis

Responses to the auditor's queries should be provided within the deadlines set by the auditor. If additional time is required to obtain some of the requested documents or information, this should be discussed with the auditor at the earliest possible time and not once the deadline has passed. Information that is available should be provided within the previously set deadline.

The respondents in our 2019 survey indicated that SARS is more likely than not to accommodate requests for extension of time for submission of documentation.

7. Keep the audit on track

While taxpayers are expected to respect timelines established by SARS (in terms of legislation and the recent service charter) it is not uncommon for delays to occur in the course of the audit due to SARS's internal procedures and/or the auditor's commitments in other audits. In some cases, these delays may result in SARS requesting that you provide a waiver in respect of the normal reassessment period in order to complete the audit.

In terms of section 42(1) of the TAA, SARS is required to keep a taxpayer informed in respect of the stage of completion of the said audit (every 90 days) – our respondents have indicated that SARS complies with section 42 more regularly (67%) in comparison with the 2018 results.

Therefore, the auditor should be held accountable for the resulting delays. Where there appears to be little or no audit activity, you should request a progress report in terms of section 42(1) – or alternatively consider escalating the matter to the relevant manager to whom the auditor should report.



8. Make consistent representations

Final representations to a letter of findings should always be made in writing. Statements made in the final representations should be consistent with the positions taken during the audit. Great care should be taken to ensure that they do not conflict with positions taken in regard to other issues or transactions.

9. Document all discussions with SARS

Auditors are required to document all interactions with taxpayers, including a summary of all discussions held during the audit. This information may be used during the dispute process – i.e. objection or appeal. Similarly, the taxpayer should also document all discussions with SARS. If the discussion took place in person or by telephone, always confirm the discussion in writing. These summaries should include the date and time of discussion, as this may be useful in requesting interest and penalties relief under the relevant legislation.

10. Final letter of assessment

Taxpayers should ensure that they consider the final letter of assessment and that they also take cognisance of the 30 days allowed to dispute (Notice of Objection) the assessment, while also taking into consideration the 'pay now argue later' rule. Taxpayers who would like to suspend payment of tax pending the dispute need to consider submitting a suspension of payment request to SARS.

Taxpayers should be aware of the fact that in terms of section 100(1) of the TAA, an assessment will be regarded as final if, for instance, no objection has been made or no appeal has been filed within the required time periods. It is therefore of the utmost importance to keep track of the prescribed time periods applicable to objections and appeals.

The recent Taxing Times survey found that 78% of participants believe that the Letter of Assessment is identical to the Letter of Findings, which leads to the question as to whether SARS truly considers the taxpayer's position or whether SARS automatically defaults into a Letter of Assessment. Taxpayers should tread with caution in this regard.



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Legislation needs to have a purpose



The draft Tax Administration Laws Amendment Bill, 2019, proposes that the legislation be amended concerning the application of reduced rates of withholding taxes on royalty, interest and dividend payments where such reductions are permitted in terms of a double tax agreement ('DTA').

As the law currently stands there is a requirement that tax must be withheld at the statutory rate unless the requirements for claiming an exemption or reduced rate are complied with:

- The principal requirement is that the person making the payment ('the payor') should have received a declaration in prescribed form from the person to whom the amount is payable ('the payee');

- The declaration must specify that the payee is entitled to relief in terms of a DTA in force between the payee's country of residence and South Africa;
- In addition, the payee must give an undertaking that should the circumstances change, with the result that the relief is no longer applicable, the payee will inform the payor forthwith.

Once a declaration and undertaking have been provided, it governs all future

withholding of tax in respect of amounts subject to withholding that may arise from time to time unless notification is given in terms of the undertaking. In effect, the declaration is a once-and-for-all declaration.

The proposed amendments deal with two issues. The first is prescribing the time by which the declaration and undertaking must be provided. The second is to limit the validity of the declaration and undertaking to a period of two years.

The proposed insertion in the relevant sections of the Income Tax Act states:

'A declaration and written undertaking ... are no longer valid after a period of 2 years.'

This raises the following questions:

- Why are the amendments necessary?
- What was wrong with the 'once-and-for-all' practice?

Interpretation of the current provisions

All that the law requires is that, by the date that the royalty is payable, or such date as may be determined by the payor, the payee must have submitted a declaration and undertaking to the payor. The purpose of the undertaking is that the payee must notify the payor should the circumstances

change and, by necessary inference, the declaration remains valid until the circumstances change.

The history of the legislation relating to the application of a reduced rate of tax shows that, in 2008, when section 64G of the Income Tax Act was enacted, a time limit was placed on the validity of a declaration in subsection (4). However, the efficacy of the declaration and undertaking process was described in the Explanatory Memorandum to the Revenue Laws Amendment Bill 2008:

Once submitted, declarations apply to all future dividends until one of the earliest of the following three events occur: (1) the beneficial owner notifies the company that beneficial ownership has ceased, (2) the share register changes in respect of the registered shareholder in relation to the underlying share, or (3) a period of three years from the date of submission of the declaration elapses (this three year limit is aimed at ensuring that companies regularly review their records).

When section 64G was replaced in 2009, subsection (4), which governed the validity of forms of declaration and undertaking, was excluded. The necessary and logical inference was that the declaration and undertaking should be regarded as binding and of continuing effect until the beneficial owner ceased to be the beneficial owner or ceased to be entitled to the relief (e.g. by reason of change of residence or termination of a DTA).

The wisdom of excluding subsection (4) is self-evident. Once a basis for relief is established and proven, that basis remains applicable until there is a change that requires the declaration to be withdrawn or amended. There was never an indication that a new declaration should be required for each dividend payment. If there were such an intention, there would be no necessity for an undertaking to inform the payor if the circumstances should change in the future.

Section 64G then became the model upon which entitlement to reduced rates of tax in terms of a DTA should be established on payment of interest or royalties subject to a withholding tax.

Reasons for change

Treasury has provided the following motivation for the introduction of a two-year limitation on the validity of a declaration and undertaking:

It was submitted that this requirement creates an administrative burden for local persons that enter into multiple transactions with a single foreign person during the 2 year (sic). This would then mean that a declaration would have to be obtained by the local person from the same foreign person with regard to each and every transaction entered into. (Our emphasis)

This motivation is contrary to the established practices and interpretation of the use of the declaration and undertaking. This was certainly never the effect of declarations in terms of section 64G of the Income Tax Act.

It is inaccurate to suggest that there was ever a requirement to submit a declaration and undertaking in respect of every dividend, royalty or interest payment. The history of section 64G amply demonstrates this. The reality is that investments, licensing agreements and loans are typically medium to long term, and the exclusion of subsection (4) gave due recognition that the declaration and undertaking was an appropriate and pragmatic mechanism to administer the withholding of taxes, without having to refresh the declaration every time a payment falls due, unless changed circumstances apply.

The introduction of provisions in the Income Tax Act (section 49E and 50E) similar to section 64G in respect of royalties and interest was intended to coordinate and streamline the procedures. A contextual interpretation of those provisions reveals that the declaration remains valid until the circumstances change and that this was the purpose of the requirement to append an undertaking to the declaration.

The takeaway

The truth of the matter is that the introduction of subsection (4) in section 49E, section 50E and section 64G will result in an additional administrative burden for payors and payees.

The purpose of these amendments appears unclear, other than to burden taxpayers and paying agents administratively.



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In the Tax Director series: Article 8

Change is happening – as responsible taxpayers, organisations need to level up to be fit for the future.

Transform* tax through automation (Part 2)

'Digital' does not necessarily mean that the tax function needs to change everything. Its core purpose of supporting the business to achieve its strategy hasn't changed. AI, robotics and machine learning help the tax function operate more quickly and efficiently. But, for these technologies to work their magic, the workforce must understand and accept them and the cultural changes they bring, and this starts at the top with the Head of Tax and CFO.



Prior articles in this series presented insights on aligning tax with business strategy, reducing the cost of delivery in the tax function, establishing robust tax governance, new legislative and regulatory challenges and the resulting impact on risk management. We discussed the need for tax to focus on playing an integral role in broader finance transformation initiatives in order to accelerate the impact of technology in delivering tax needs.

Most recently, we focused on a critical and rapidly emerging trend – Transform* tax through automation and achieving success by going smart, fast, and small. This entails strategies to help tax become a better strategic partner within the wider organisation.



40%

of effort could be realigned to more value-driven activities through the use of automation.¹



62%

of executives are making significant investments in AI over the next three years.²



46%

amount of time that automation can save in completing key data-gathering processes.³



80%

improvement in productivity of individual processes as a result of small automation.⁴



40%

of employees' time is spent gathering rather than analysing data due to inefficient processes.⁵

In this edition the spotlight is on emerging small automation trends such as robotic process automation (RPA) and artificial intelligence (AI) and their impact on the tax function.

¹ PwC Finance Effectiveness Benchmark Study 2017

² PwC's 2017 Global Digital IQ Survey

³ PwC Finance Effectiveness Benchmark Study 2017

⁴ Strategy+business, 2018

⁵ PwC Finance Effectiveness Benchmark Study 2017

Decreasing the error rate – increasing the quality

RPA is the use of computer-coded smart software to efficiently carry out manual, repeatable and time-consuming tasks that are normally performed by people. It differs from traditional software by working at the user interface level, replicating the exact actions of a human user and in essence creating a digital workforce. RPA is the efficient design of business models, strategy, process, data, humans and robots in a way that unifies them.

It's not just about making the tax function less costly; it's also about allowing it to be more valuable to the business.

RPA enables employees to focus more on tasks that genuinely require human cognitive abilities or intervention, resulting in cost-reduction benefits to business. RPA thus executes processes that take up valuable resource time (extraction and manipulation), with much more efficiency and at a much lower cost, 24/7. The error rate decreases, and the process quality increases.

Configuring a robot is generally fairly easy and affordable, requiring only basic algorithmic knowledge. It can be enhanced with more complex AI and machine-learning capabilities to achieve the automation of complex processes, including decision-making. This will allow the robot to take decisions and adapt to certain changes in the process.



Key features of RPA

Technology agnostic	Non-invasive, non-intrusive	Scalable	Mimics user interactions	Automates repetitive, rule-based processes
<ul style="list-style-type: none">• Works across all functions, legacy ERPs, mainframes, custom applications, desktop applications, and any other types of IT platforms. Any technology platform that can be used by a human can also be navigated by an RPA robot.• Uses a central repository for easy management of automation scripts and processes.• Improves accuracy due to increased visibility into accounts.	<ul style="list-style-type: none">• Leverages other application software through the existing application's interface; therefore, it is not technically integrated.• Since complex integration is not required, RPA programs can be launched in a matter of weeks, resulting in low cost of implementation and high return on investment.	<ul style="list-style-type: none">• Staff can be trained to maintain, program and deploy bots.• Bots are subject to full audit with visibility and traceability to security access and modifications.	<ul style="list-style-type: none">• Records and automates user interactions with one or more software application.• Interacts with the user interface of existing applications in the same way that an everyday user would.	<ul style="list-style-type: none">• Mimics the interaction of users.• Builds workflows with dynamic decision/branch points and loops for scaling.• Able to break down processes into smaller components.

How can RPA add value in tax?

Too often the tax function is tied up carrying out repetitive tasks, often without following a consistently optimised process. In fact, it's quite common to find people working in the same department, on the same tasks, but following completely different methods to get the job done. Prior to introducing RPA in a tax process it is key to assess your current processes and work out the most efficient approach to achieve your business objectives, because there is no benefit in applying robotics to a process that is broken.

The technology is an enabler, but not a comprehensive solution in itself. RPA is one of many tools that can be used to achieve operational excellence; therefore the tax function needs to define the appropriate processes and efficiency gains required.

Once you have achieved a standardised, control-based process you are able to begin integrating RPA and in some cases enhancing RPA with AI to further improve operational effectiveness and decision support. Process robotics can be applied in every area of the tax function where manual, repeatable, and time-consuming processes are still in effect, even if tax has already implemented technology solutions for direct and indirect tax compliance and reporting. This takes tax one step closer to creating high-performing teams that add real value.

Opportunities for quick wins (high automation potential): RPA tax opportunities

Data collection

- Extract book trial balance and key balances such as accruals, fixed assets, or other tax-sensitive accounts
- Extract data for specific disclosure e.g. cash taxes paid, country-by-country reporting (CbCR)
- Export industry- or company-specific data

Review and convert data for tax

- Review accounts to ensure consistency with prior year and note changes
- Organise data by legal entity versus management reporting
- Analyse account changes (accrual book/tax adjustments)
- Flag significant account differences for follow-up investigation

Reconciliations

- Clean up and reconcile accounts (e.g. intercompany)
- Identify unreconciled items and send alerts
- Checking and reconciliation of various tax balances to identify exception items for review
- Reconciliation of balance and transactions in the finance system

Prepare calculations

- Formatting, cutting, pasting to get info ready to be entered into the tax computation system
- Validating information by referring to a checklist of items to ensure that the checklist is complete

Account for taxes

- Book current tax entries
- Calculate deferred taxes
- Book deferred tax accounting entries

Prepare corporate tax returns

- Populate tax returns with financial data
- Automated import of financial tax workbook into tax return forms (using tax return software)
- Complete non-financial tax return line items and information fields
- Execute work-flow processes for tax returns and initiate electronic estimated payments

VAT process

- Interact with bolt-on indirect tax solutions and financial systems to complete high volumes of tax returns
- Auto-coding of invoices for tax
- Checking and reconciliation of various VAT balances to identify exception items for review
- Execute work-flow processes for VAT returns and initiate electronic payments
- Gather transactional details and supporting invoices in response to multiple jurisdictions' audit request

Other tax processes

- Execute work-flow processes to prepare CbCR computation
- Upload tax return data onto e-filing profile.



AI in the tax value-creation journey

Artificial intelligence includes a set of technologies like machine learning that sense and analyse data, learn from it, and perform actions based on it. AI can attribute meaning to data – including unstructured data such as contracts or email text – to make intelligent recommendations or actions. This capability translates into helping people perform tasks faster and better, and automating certain decisions along the way. AI, especially machine learning, is rapidly finding a role across a variety of enterprise functions and is also reinventing the world of tax functions.⁶

Automate routine decisions and reporting

One of AI's simplest – yet most useful – applications involves the automation of routine tasks, the kind of time-consuming work that can fill a professional's workday. This work involves using machine-learning algorithms. For example, these intelligent algorithms can be put to work to categorise sales into the proper jurisdiction for managing VAT calculations. Or they can scan and analyse employee expense reports to determine which deductions are available based on the type and amount of each expense. While using machine-learning algorithms requires some level of thought, they are not overwhelmingly complex, and, in fact, some of these tools can be installed and managed fairly easy.

⁶ PwC Five ways artificial intelligence is changing tax

Monitoring through dashboards

Since the rise of the cloud computing era, the dashboard, which can provide suggested actions based on learning algorithms, has become one of the most indispensable business tools available. While a simple dashboard may give a tax professional an overview of certain criteria, a dashboard informed by AI is more dynamic, allowing a tax professional to use the system not only to evaluate the past, but also to anticipate the future, giving the tax function an understanding of issues at a glance, aiding decision-making.

Improve forecasting

AI can make forecasting more accurate and faster, by applying tactics that can detect trends on an annual, quarterly, monthly, or even more frequent basis.

Adaptive learning based on operations

At the highest level of AI function, machine learning will be put to task to make (or aid) complex decisions in the absence of any real structured data at all. For example, instead of your legal team spending hours poring over a 500-page sales contract, an AI tool will be able to do the same job in a matter of seconds, determining whether the document contains any thorny legal problems or taxation risks.

The automated future

Small automation projects that use RPA and basic AI might require only a few weeks to automate discrete processes for quick wins. These small-scale projects put these technologies into action quickly, generating immediate benefits across a range of activities, from error detection and compliance reviews to planning and analysis. Other benefits include:

- **Cost reduction:** RPA and AI bring immediate reductions in operational cost and generate a rapid return on investment.
- **Value-focused resources:** The priorities of the employee workforce will shift to innovation, strategy and other business development activities.
- **Quality and compliance:** The automated nature of RPA and AI reduces errors and leaves a digital audit trail that increases accuracy and regulatory compliance, enabling programmable controls.
- **Speed to value:** RPA and AI accelerate the time to delivery and avoid invasive traditional system integration – weeks or months instead of years.

What actions should tax functions take now?

- Assess needs/investigate qualifying processes (consider time and resources currently consumed).
- Evaluate whether RPA and AI are already deployed by other functions.
- As needed, collaborate across functions to evaluate vendor solutions (proof of concept, proof of value).
- Develop a tax roadmap for RPA and AI working with finance, IT, HR, supply chain, and other impacted functions.

For more information view our Tax Function of the Future series [here](#).



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We value your input

Our way of working is to take the time to understand your business, your tax function and the issues and challenges you are facing, specifically around tax technology, so that we can use our local and global knowledge to help you introduce and deliver appropriate tax technology strategies that work specifically for you.

To this end, we have designed a survey to gain insight into your specific needs so that we can work with you to chart a course to creating a tax function that is fit for the future.

Click on the link to access the survey: 

The survey takes approximately ten minutes to complete and your responses will be held in the strictest confidence. Any data published will be presented in aggregate.



SARS Watch

SARS Watch 26 July 2019 – 25 August 2019

Legislation		
23 August 2019	Amendment to Part 2 of Schedule No. 4 by the substitution of rebate item 460.03/0207.14.9/01.07 in order to increase the annual quota for bone-in cuts of the species <i>Gallus Domesticus</i> , frozen and imported from or originating in the United State of America – ITAC Minute M02/2019	Notice No. R. 1103 published in Government Gazette No. 42658 with retrospective effect from 1 April 2019.
16 August 2019	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 7210.11, 7210.12.10, 7210.12.90 and 7212.10, to increase the rate of customs duty on tinplate from free of duty to 10% – ITAC Report No. 606	Notice No. R.1075 published in Government Gazette 42640 with an implementation date of 16 August 2019.
8 August 2019	Amendment to the Schedule to the Rules under the Customs & Excise Act, 1964, by the substitution in item 202.00 for form DA 1	Notice No. R. 1042 published in Government Gazette No. 42621 with an implementation date of 8 August 2019.
31 August 2019	Table 3 – Rates at which interest-free or low-interest loans are subject to income tax	The official interest rate defined in section 1(1) of the Income Tax Act no. 58 of 1962 has changed to 7.50% from 1 August 2019.
30 August 2019	2019 Draft Income Tax Amendment Bill for public comment	The Bill contains environmental tax incentive announcements made in Chapter 4 of the 2019 Budget Review. The due date for comments is Friday, 23 August 2019.
26 August 2019	Imposition of provisional payment increased imports of threaded fasteners of iron	Notice No. R. 1012 published in Government Gazette No. 42594 with an implementation date of 26 July 2019 up to and including 10 February 2020.
Case law		
According to judgment date		
15 August 2019	Acti-Chem SA (Pty) Ltd v Commissioner for the South African Revenue Service	The applicant contends that it is entitled to a rebate on goods imported by it in terms of the Customs and Excise Act 91 of 1964.
Rulings		
23 August 2019	BPR 325 – Liquidation distribution and amalgamation transaction between non-resident companies	This ruling determines whether the proposed mergers under foreign law will constitute a liquidation distribution and an amalgamation transaction.
20 August 2019	BPR 324: Disposal and acquisition of shares by a public benefit organisation	This ruling determines the tax implications arising from the acquisition by a public benefit organisation of listed Black Economic Empowerment (BEE) shares.
Guides and Forms		
16 August 2019	DA 162 Monthly biodiesel account manual	The purpose of the manual is to assist licensees of Manufacturing Warehouses in the Biodiesel Industry to complete the monthly biodiesel account and is effective from 19 August 2019.
7 August 2019	Tax guide for small businesses 2018/19	This guide is a general guide dealing with the taxation of small businesses for the 2019 year of assessment.



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