Synopsis

Tax today

September 2021

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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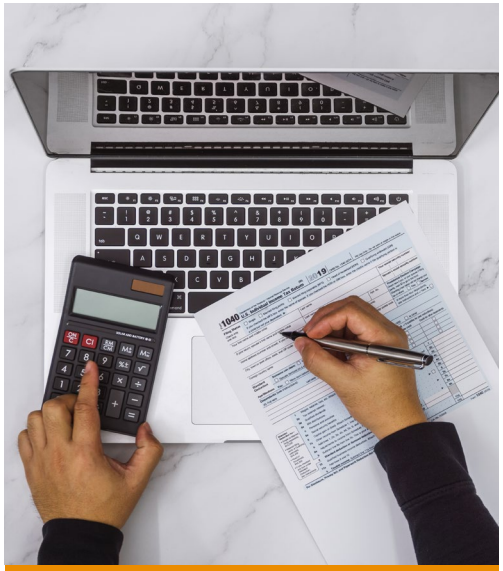
The tragedy of VAT apportionment



The SCA judgment in the case of Mukuru Africa (Pty) Ltd vs The Commissioner for SARS confirms that an alternative method of apportionment can only be approved by the Commissioner from the year of assessment within which the taxpayer applied to SARS for approval of such method, and not retrospectively.

On 15 November 2019, the Tax Court handed down its judgment in the case of *The Taxpayer versus the Commissioner for the South African Revenue Service ("SARS") in VAT Case No. 2063*.

The facts

The Taxpayer provides money-transfer services within Africa and bureau de change services.

In the conduct of its enterprise, the Taxpayer makes both taxable and exempt supplies for value-added tax ("VAT") purposes. As a result, the Taxpayer is required to apportion the VAT that it incurs partly for purposes of making taxable supplies and partly for other purposes ("mixed-purpose expenses").

In light of the above, the Taxpayer applied to SARS during 2017 for a VAT ruling in terms of section 17(1), read with section 41B of the Value-Added Tax Act, No. 89 of 1991 ("the VAT Act"), requesting approval to apply the transaction count-based ("TCB") method to determine the extent to which it could deduct VAT incurred on mixed-purpose expenses. The Taxpayer requested this method of apportionment to be approved with effect from 1 February 2014.

On 8 November 2017, SARS issued its decision, approving the application of the TCB method of apportionment. The TCB method was, however, only approved with effect from 1 March 2016 (i.e. from the commencement of the financial year within which the Taxpayer applied for the ruling). SARS denied the request to backdate the application of the TCB method in respect of periods prior to March 2016.

The issue

The dispute centered around whether SARS was precluded by law, and, more particularly, by proviso (iii) to section 17(1) of the VAT Act, from approving the use by the Taxpayer of the TCB method in respect of historic tax periods (February 2014 – February 2016).

Tax Court

The Taxpayer appealed to the Tax Court against the refusal by SARS to grant its approval to apply the TCB method of apportionment for the tax periods 1 February 2014 to 29 February 2016.

The law

The general rule is that where goods or services are acquired by a vendor for the purposes of making taxable supplies, the VAT on such expenses may be deducted as input tax, unless the deduction is specifically denied.

However, where goods or services are acquired for both taxable and non-taxable purposes (that is, mixed-purpose expenses), only a portion of the VAT on such expenses may be deducted as input tax. As a result, the vendor must apply an appropriate method of apportionment so that only a fair and reasonable proportion of the VAT is deducted as input tax.

In this regard, section 17(1) of the VAT Act provides:

> "(1) Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, the extent to which any tax which has become payable in respect of the supply to the vendor or the importation by the vendor, as the case may be, of such goods or services … is input tax, shall be an amount which bears to the full amount of such tax or amount, as the case may be, the same ratio (as determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the Tax Administration Act or section 41B) as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services …"

The only pre-approved method of apportionment, which can be used without prior written approval from the Commissioner, is the standard turnover-

based (STB) method as set out in Binding General Ruling No. 16 ("BGR 16"). It is a specific condition of BGR 16 that in circumstances where the STB method is inappropriate because it produces an absurd result, proves impossible to use, or does not yield a fair approximation of the extent of taxable application of the enterprise's VAT-inclusive expenses, the vendor must approach SARS to obtain approval to use an alternative method which yields a more accurate result.

The 'change' or 'approval to change' an apportionment method must be done in accordance with proviso (iii) to section 17(1), which states that:

> "where a method for determining the ratio referred to in this subsection has been approved by the Commissioner, **that method may only be changed with effect from a future tax period**, or from such other date as the Commissioner may consider equitable and such other date must fall… during which the application for the aforementioned method was made by the vendor."

Tax Court decision

Having regard to the above, the Tax Court found in favour of SARS and stated that *"there is no reason why the legislature should not restrict the period of retrospective application of a private binding ruling having regard to the context and purpose of the provision and affording the provision a sensible and businesslike interpretation to it"*.

SCA appeal

The decision of the Tax Court was taken on appeal to the Supreme Court of Appeal ("SCA") and heard on 30 August 2021 in the matter of Mukuru Africa ("Mukuru") vs SARS. The three material submissions made by Mukuru for consideration by the SCA was:

- Whether the application of the STB method for historic periods was "fair and reasonable".
- BGR16 must be considered in its entirety and the ruling made in BGR16 is subject to internal limitations and restrictions. The effect of these conditions is that the STB method could never have applied to Mukuru in the first place.
- Section 17(1) as well as proviso (iii) thereto must be interpreted to apply to a specific vendor and cannot be regarded as a blanket approach for all vendors. As such, the approval of the method referred to in proviso (iii) to section 17(1) can only be a specific method approved for Mukuru and not a blanket approval for all vendors in general.

SARS argued, however, that the STB method approved in terms of BGR16 was a method approved for all vendors. SARS further contended that it was up to the vendor to opt out of applying the STB method when it was not appropriate. Therefore, in SARS' view, the STB was a method approved for Mukuru prior to SARS approving the TCB method and it could therefore not approve the retrospective application of the TCB method.

SCA judgment

The SCA handed down its judgment on 16 September 2021, concluding that the STB method set out in BGR16 was an approved method for all vendors, i.e. *"the ratio in BGR16 thus applies to all vendors to whom section 17 finds application and who had not applied for and been granted an alternative ruling by the Commissioner."*

The SCA further found that the conditions in BGR 16 *"are not conditions in the true sense and that they do not relate to the ratio referred to in section 17, but rather to the requirement to apply to SARS for an alternative ruling in the event that the STB method operates unfairly and unreasonably or is inappropriate. The condition, such as it is, cannot qualify section 17(1)."*

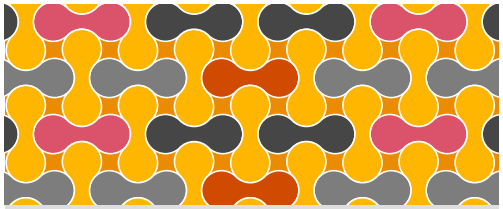
The SCA mentioned that *"the purpose served by the requirement that a vendor must make an application to the Commissioner is to enable the latter to evaluate whether there is indeed any unfairness, unreasonableness or inappropriateness and if so, to approve an alternative method."*

The impact

Based on the SCA's judgment, BGR 16 is an approved method for all vendors and it must be applied in the absence of an approved alternative method of apportionment.

Any change to the method of apportionment can only be with effect from a future date and not retrospectively.

In light of this, SARS will only approve a specific method for a vendor with effect from the year of assessment within which it applied for the use of an alternative method of apportionment.



What does this mean for vendors?

Vendors that do not have an approved alternative method of apportionment for past periods (that is, for prior years of assessment) can only use the STB method to determine the input tax deductible on mixed-purpose expenses.

Therefore, vendors who have deducted input tax in respect of mixed-purpose expenses:

- based on an unapproved method in the past; or
- in full, where it should have apportioned such expenses

will be required to make the necessary adjustments in order to bring to account the input tax over- or under-deducted by applying the STB method.

We caution that vendors who are required to apportion input tax will in all likelihood be closely monitored and evaluated by SARS in order to determine compliance with the VAT Act. It is therefore crucial that a vendor consider its approach regarding apportionment, namely, determining whether it was correctly applied and the need for an alternative method of apportionment.

PwC commentary and takeaway

This judgment by the SCA does not measure the impact this decision has on the mechanics of a VAT system. One of the critical pillars of VAT is that VAT as a tax should not become a cost to a business unless specifically provided for in law, for example the denial of VAT on entertainment expenses. Anything less results in tax cascading, which ultimately impacts the price of goods or services that businesses will pass on as a cost to its customers.

Important to note is that it is accepted that the STB method of apportionment is inappropriate for Mukuru. SARS acknowledged this and approved the use of the TCB method for the 2017 financial year and thereafter. Despite this, Mukuru was forced to apply the STB method to determine its input tax deductions on mixed-purpose expenses.

It follows that the SCA judgment in this instance denies a vendor from deducting the appropriate amount of input tax, which goes against the objective of the VAT Act and which, objectively, is unfair on an "involuntary tax collector"[1], resulting in SARS ultimately collecting more tax than is due by a taxpayer.

Further to the above, unlike other SCA judgments pertaining to VAT cases, there is little or no legal precedent applied by the Court in arriving at its decision.

[1] Metcash Trading Limited v Commissioner for the South African Revenue Service and Another [2000] ZACC 21 at para 17

An interesting implication of this judgment is that we now have two prescription rules for VAT, namely:

- the general five-year prescription; and
- a one-year prescription applicable to applying for an alternative method of apportionment.
- It seems rather odd that the VAT Act allows a vendor five years to correct a tax invoice and deduct input tax thereon, which is a rather simple exercise, but in the case of apportionment, a vendor only has a year to resolve an issue.
- The above is difficult to digest when considering that apportionment in itself is a complex issue. Even SARS acknowledges this and can take up to 18 months to finalise and issue an apportionment ruling.
- The outcome raises the question of whether it is truly correct to apply the STB method in circumstances where a vendor never applied apportionment and deducted input tax in full on mixed-purpose expenses. The conclusion reached by the SCA would suggest that such a vendor is prevented from making a fair and reasonable deduction of input tax and must therefore apply the STB method as a default method.
- Previously, SARS had the discretion to approve a method of apportionment for retrospective and prospective tax periods where it was satisfied that the alternative method of apportionment was equitable or fair and reasonable. Under this approach, the normal five-year prescription rule for input tax was applicable, that is, not unduly denying input tax. This approach was in accordance with the principles and objectives of a VAT system. The subsequent amendment to section 17(1) was, in our view, not to change this approach but rather to prevent taxpayers from applying to SARS to continuously change their already approved alternative methods of apportionment and prevent such methods from being retrospectively applicable.
- In our view, SARS and National Treasury should consider this outcome and amend the VAT Act to ensure that an "involuntary tax collector" only pays what tax is due in accordance with the structure and accepted principles of VAT.
- Maybe it is time to let the method of apportionment be a self-assessment outcome which is aligned to the overarching reporting objective of a VAT system, i.e. taxpayers determine the appropriate method of apportionment and deduct input tax accordingly without the administrative burden of applying to SARS for a ruling or approval. SARS and National Treasury should only provide guidance on how to arrive at a fair and reasonable method.

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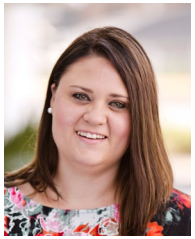

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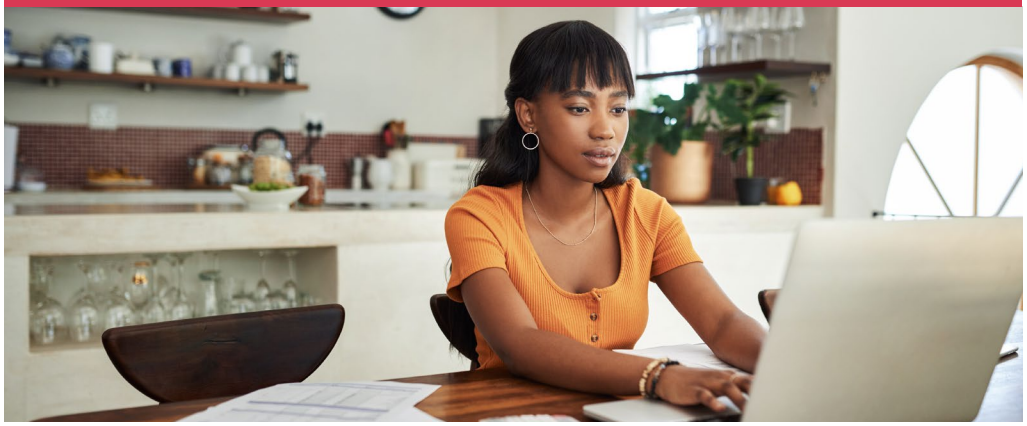
Late payment of PAYE penalties: When is payment late and what are reasonable grounds to remit?

On 23 August 2021, a full bench of the Western Cape High Court delivered its judgement in the matter of *PERI Formwork Scaffolding Engineering (Pty) Ltd v Commissioner for the South African Revenue Service (A67/2020) [2021] ZAWCHC 165*, wherein the Court provided certainty to employers on:

- Counting the seven-day period within which an employer must pay PAYE to SARS; and
- The reasonable grounds that would justify the remittance of a late-payment penalty and interest.

The Court confirmed that in the event that the due date for payment of PAYE falls on a Saturday, Sunday or public holiday, the employer is duty bound to make payment of the taxes on or before the last business day **before** the due date.

Further, the full bench of the High Court confirmed that cash-flow constraints due to inaccurate forecasting do not constitute reasonable grounds for the remission of the late-payment penalty. However, where a taxpayer makes every effort to raise the funds required to pay SARS, SARS may exercise its discretion to remit the penalty in favour of a taxpayer.



The facts

1. The Appellant appealed to the full bench of the Western Cape High Court after receiving an adverse judgement in the Tax Court (sitting in Cape Town) on 19 December 2019.

2. The Appellant was an employer who submitted its employer reconciliation declaration, due on 31 December 2017, on 18 December 2017. An amount of R10 648 340.93 was due in terms of this return. The Appellant submitted the instruction for payment on eFiling on the same date as the return was filed to their bank for payment on 3 January 2018. The Appellant submitted its declaration in advance due to its offices being closed between 15 December 2017 and 3 January 2018.

3. The bank could, however, not effect the payment instruction due to insufficient funds held by the Appellant at the time, which the Appellant ascribed to a shortfall and late payments received from its debtors.

4. The Appellant immediately set in motion several attempts to raise the required funds to pay the PAYE declared by it to SARS, which included applying for an overdraft facility with its bank and requesting financial assistance from another affiliated entity.

5. Ultimately, sufficient funds were only available to the Appellant to pay SARS on Monday, 8 January 2018. On the same day, payment was made to SARS.

6. The Appellant led evidence to the effect that its bookkeeper had been responsible for forecasting the Appellant's cash-flow position for over eight years and that she had always been accurate in terms of her projections. The fact that at the end of 2017/ beginning of 2018 the Appellant had insufficient funds to pay SARS was unusual.

Counting of the seven-day period within which to pay PAYE to SARS

The first point that the full bench of the High Court was asked to decide on was whether the Appellant was in fact late in making payment of the PAYE to SARS. SARS argued that the last date of payment was Friday, 5 January 2018, whilst the Appellant submitted that the last day to make payment was Monday, 8 January 2018.

The submissions of the Appellant were:

1. Paragraph 2(1) of the Fourth Schedule of the Income Tax Act, 58 of 1962 requires payment of declared amounts *"within seven days after the end of the month during which the amount was deducted or withheld"*.

2. Section 244(1)(b) of the Tax Administration Act, 28 of 2011 provides as follows:

   "If:

   (b) The last day of a period within which payment, submission or other action under a tax Act must be made,

   falls on a Saturday, Sunday or public holiday, the action must be done not later than the last business day before the Saturday, Sunday or public holiday."

3. The Appellant submitted that section 4 of the Interpretation Act, 33 of 1957 was applicable to the reckoning of the period of days within which the Appellant could make payment of the declared amount in terms of paragraph 2(1) of the Fourth Schedule of the Income Tax Act and, accordingly, that the payment was due on or before 8 January 2018.

4. The operation of the Interpretation Act, i.e., excluding Saturdays, Sundays and public holidays from the counting of days for purposes of determining deadlines, is referred to as the 'statutory method'.

5. The Appellant argued that section 4 of the Interpretation Act applies to the reckoning of days for payment of PAYE and that as such the due date for payment is the first business day after a Saturday, Sunday or public holiday, in this case being Monday, 8 January 2018.

The full bench of the High Court found as follows:

> "[34] Section 244(1) of the Tax Administration Act deals with the calculation of days specified in the Tax Act for payment, submission or any other action under the Tax Act. It clearly states that if the last day of a period in which the taxpayer is meant to inter alia make payment falls on a Saturday, Sunday or public holiday; such payment should be done no later than the last business day before such Saturday, Sunday or public holiday. Thus, in my view, the legislation is very clear.
>
> [36] It is trite that for purposes of computing days in a statute, ordinary calendar days are included in the calculation of such time periods. It is also trite that s 4 of the Interpretation of Statutes Act only becomes applicable if the statute is silent about 6 Judgment paragraph [21] 12 the method of computation of days. If the applicable statutes are clear and unambiguous, then s 4(1) finds no application."

The full bench found against the Appellant and confirmed that the last date for payment of the PAYE occurred on 5 January 2018 and that the payment on 8 January 2018 was indeed late.

Reasonable grounds

In terms of section 217(3) of the Tax Administration Act, SARS may remit a penalty if SARS is satisfied that the non-compliance (in this case the late payment of PAYE) was a first instance, that reasonable grounds exist for the non-compliance and if the non-compliance has been remedied.

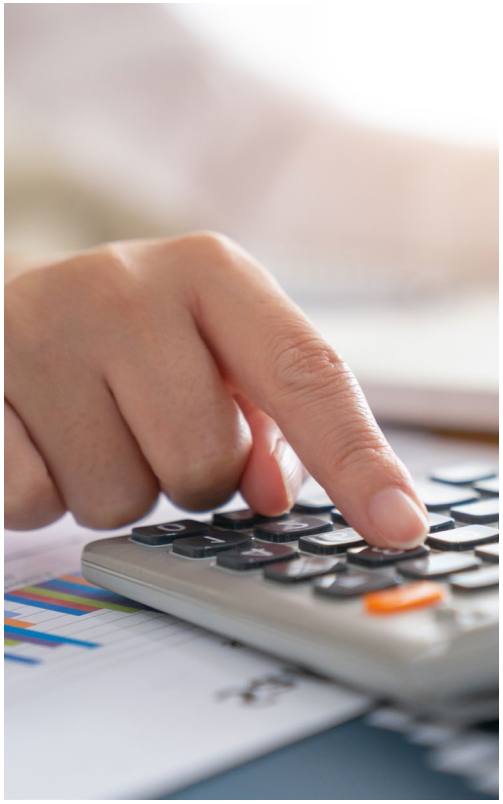
It was common cause that the late payment of the PAYE was a first incidence and that the non-compliance had been remedied. The full bench of the High Court was asked to decide whether under the circumstances there existed reasonable grounds for the non-compliance.

The Appellant presented the following facts to support its contention that reasonable grounds existed for the non-compliance:

1. The Appellant relied on the case of *Attieh v The Commissioner for the South African Revenue Service [2016] ZAGPJHC 371* for the proposition that reliance by a taxpayer on the expert advice of a tax practitioner, which proved to be wrong, could amount to 'reasonable grounds' to justify a taxpayer's non-compliance. In this instance the Appellant contended that it relied on the expertise of its bookkeeper, who, historically, had been accurate in forecasting its cash flow. It asserted that the decisions of the bookkeeper had not been risky and had been reasonable.

2. The Appellant further asserted that the penalty was disproportionate to the non-compliance. Put differently, the Appellant's counsel argued that the 10% penalty levied by SARS was too burdensome, given that the Appellant was only one day late in making the required payment.

SARS, on the other hand, proposed to the Court that there existed a fiduciary relation between an employer and SARS and that as a result an employer *has a special duty of highest care to act in the interest of the fiscus*. As such, SARS argued, it was reckless of the taxpayer to allow the PAYE that it deducted from its employees to be mixed with its own funds. Had the Appellant ring-fenced the PAYE it deducted, it would not have been in a situation where it was unable to make payment of the PAYE when it became due and payable.



The full bench of the High Court rejected the assertions of SARS that a fiduciary relationship existed between employers and SARS in respect of withholding tax. Instead, the Court compared the relationship between an employer and SARS to that of a debtor and an unsecured creditor. The Court also found that there existed no duty on an employer to keep the PAYE that it deducts separate from its own funds.

The full bench of the High Court went on to reject the Appellant's contention regarding the appropriateness of the 10% penalty in relation to the non-compliance, saying that an inquiry into what would be a proportionate penalty in relation to non-compliance would cause uncertainty amongst taxpayers and SARS alike. The Court confirmed that the 10% penalty is triggered as soon as the non-compliance occurs.

The full bench of the High Court did, however, find that reasonable grounds existed to justify the remission of the penalty. In this regard, the Court found that the Appellant relied on the prospects of receiving payments from its debtors during a "precarious time" of the year, which was an unreasonable reliance on the part of the Appellant. However, the Court did find that section 217(3) of the Tax Administration Act provides a mechanism of relief to taxpayers in the event of a first incidence of non-compliance. The Court went on to say:

> "In my view, in this instance, a factor which SARS failed to consider, which could, in my view, render it as a reasonable ground, is the **manner** in which the Appellant, when it realised that it would be unable to comply with the payment instruction on 3 January 2018, attempted to rectify the deficiency…
>
> There was no prejudice to SARS and neither was there any mala fides indicated; to the contrary, every effort was made by the Appellant to comply with its obligations to SARS. This, in my view, evidences reasonable grounds for the penalty imposed to be have been remitted, especially given the fact that it was a first incidence of non-compliance. In the circumstances, I am of the view that the appeal must succeed."

Remission of interest

The full bench of the High Court only referred to section 89bis of the Income Tax Act, but made no specific finding in this regard, save to uphold the appeal of the Appellant.

Given that, where the circumstances justify it, SARS has a wide discretion to remit interest in favour of a taxpayer, it should reasonably follow that reasonable grounds for purposes of remitting the penalty apply equally to the issue of interest.

Key takeaways

i. Careful planning of cash-flow abilities (especially around the festive season) cannot be overemphasised. The fact that a taxpayer does not receive payments from its debtors as expected will not constitute reasonable grounds for the remission of a late-payment penalty of PAYE.

ii. Crucially important is that the seven-day period allowed for the payment of PAYE includes Saturdays, Sundays and public holidays, leaving a very small window within which payments may be effected.

iii. Leaving PAYE obligations to the last minute will be at one's own peril.

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SARS' new procedure for breaking South African tax residency

Up until very recently, the primary method of informing SARS that a taxpayer had broken South African tax residency was by marking the date of cessation on the relevant annual tax return (a taxpayer or their representative could set up a meeting at a SARS branch to inform SARS). SARS has now introduced a new declaration form which can be used to inform them that a taxpayer has broken South African tax residency.

This form does not replace the traditional method of marking the cessation of residency on the tax return; rather, it is an alternative. A taxpayer thus has the option to either inform SARS by means of the new declaration form or mark it on the tax return. If the declaration form is used, the taxpayer or their representative will need to email the form with supporting documents to SARS' relevant email address. There is no difference in the outcome, no matter what method is used.

While it may seem pointless to use the new declaration form, there are some circumstances where it needs to be used and some circumstances where it could be advantageous to do so. These are set out as follows:

1. If the taxpayer broke tax residency before the option to inform SARS was available on the ITR12 and they now want to inform SARS of the event, the declaration form can be used to provide an added level of certainty.

2. If the taxpayer does not have an eFiling profile because of having left South Africa prior to eFiling being established, the declaration form can be used instead of the taxpayer having to set up a new eFiling profile.

3. If the taxpayer wants formal confirmation from SARS that they have broken their South African tax residency, this can be achieved by submitting the declaration form. Currently, the only confirmation that a taxpayer is able to obtain from SARS that they have broken their tax residency is to take a screenshot of form RAV01 (from eFiling) that contains the taxpayer's tax residency status. If the taxpayer has marked that they have broken their tax residency on their tax return, the RAV01 should reflect the taxpayer as a non-resident taxpayer. Formal confirmation of tax residency status from SARS can be very useful for a taxpayer, especially if they are concerned about SARS trying to tax them on worldwide employment income of over R1.25 million in the event of being tax resident (although any residence declaration to SARS can be subject to challenge).

4. The declaration form can be used if, as a taxpayer's representative, you do not have access to that person's eFiling profile when assisting them with breaking their South African tax residency.

As can be seen, the new declaration form that can be used to inform SARS that a taxpayer has broken South African tax residency can be a very useful tool, even for employers. If a taxpayer's employer needs formal confirmation from SARS that an employee has broken tax residency to mark them as a non-resident on the payroll and thus not withhold PAYE (under certain circumstances), this new declaration form can also be used by the employer.

As part of this process, SARS requests certain supporting documentation, as set out below.

Standard requirements (to be submitted with all declarations)

- The signed declaration, indicating the basis on which you qualify;
- A letter of motivation, setting out the facts and circumstances in detail to support the disclosure that you have ceased to be a tax resident; and
- A copy of your passport/travel diary.

Specific requirements

In addition to the above, you should also supply the below, as applicable, depending on the basis on which you have ceased to be a tax resident in South Africa.

Qualifying basis 1: Ceasing to be ordinarily resident

- The type of visa on which you have gone to the foreign country;
- Where you have already taken up permanent residence in the foreign country, proof thereof;
- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates that you are regarded as a tax resident in that country (if available);
- Details of any property that you may still have available in South Africa (indicating the purpose that such property is being used for);
- Details of any business interest (e.g. investment or employment) that you may still have in South Africa;
- Details of your family, indicating whether any family members are in South Africa and the reason therefor;
- Details of your social interests (e.g. gym contract, recreational clubs and societies) and the location of your personal belongings; and
- Details of any return visits to South Africa, the frequency thereof and the reason for undertaking such visits.

Qualifying basis 2: Ceasing by way of the physical presence test

- Only the standard requirements must be supplied.
- Qualifying basis 3: Ceasing due to application of double-tax agreement (DTA)
- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates your status as a tax resident in that country.

The takeaway:

Given that the process is new, it remains to be seen to what extent SARS will audit such documents or the extent of disallowance of the declaration. As such, professional assistance should be sought in advance of any such approach to SARS so that the criteria for cessation of residence can be examined and assistance provided in the validation of supporting documentation.

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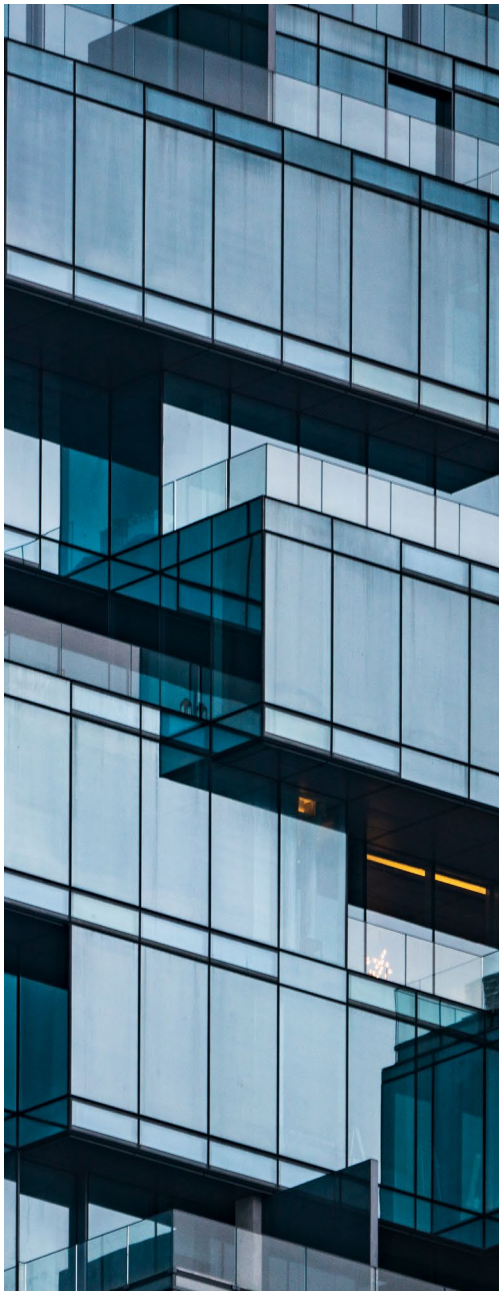

SARS Watch

SARS Watch 1 September 2021 – 30 September 2021

Legislation		
10 September 2021	Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003	The average exchange rates for a year of assessment have been updated to include the average rates in August 2021.
10 September 2021	Table B – A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months	The monthly average exchange rates have been updated to include the average rates in August 2021.
Customs and excise		
17 September 2021	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheading 7325.91, in order to increase the general rate of customs duty on grinding balls from free of duty to 15% – ITAC Report No. 638	Tariff Amendment Notice R871 published in Government Gazette 45170 with an implementation date of 17 September 2021.
10 September 2021	SC-CF-19 – Registration Licensing and Designation – External Policy	This policy deals with the types of client required to be registered and became effective from 1 October 2021.
10 September 2021	Draft Schedule amendments, amending notes in Part 1C of Schedule No. 6	Comments were due to SARS on Monday, 27 September 2021.
8 September 2021	Offences and Penalties Policy – External Policy	This policy has been updated with a contravention list annex effective from 8 September 2021.
6 September 2021	Draft DA 185.4B3 – Storage warehouse	Comments were due to SARS on Monday, 20 September 2021.
6 September 2021	Draft DA 185.4B4 – Special storage warehouse	Comments were due to SARS on Monday, 20 September 2021.
3 September 2021	Draft amendment to rules under sections 19, 60 and 120 – CCTV cameras	Comments are due to SARS on Sunday, 3 October 2021.
Case law		
According to judgment date		
16 September 2021	Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service (520/2020) [2021] ZASCA 116	The SCA handed down a decision that proviso (iii) to section 17(1) of the VAT Act was applicable to the Appellant and that a method of apportionment could only be approved by the Commissioner from the year of assessment within which the taxpayer applied to SARS for approval of such method.
Interpretation Note		
16 September 2021	Draft Interpretation Note: Associations, Funding Requirement	Comments must be submitted to SARS by 5 November 2021.
Guides and Forms		
16 September 2021	Draft Tax Exemption Guide for Small Business Funding Entities	Comments must be submitted to SARS by 19 November 2021.
13 September 2021	GEN-DC-20-G03 – Deferral of Payment Arrangements on eFiling – External Guide.	The purpose of this guide is to assist taxpayers to initiate a payment arrangement request on eFiling for outstanding debt.
13 September 2021	GEN-ENR-01-G03 – How to activate, submit and declare IT3 via eFiling – External Guide.	The guide has been updated to include the IT3 third party data system modernisation.
13 September 2021	GEN-PEN-05-G01 – How to Dispute Administrative Penalties via eFiling – External Guide.	The guide has been updated with PIT once-off penalty information.
13 September 2021	PAYE-AE-06-G07 – Guide for Validation Rules Applicable to Reconciliation Declarations 2022 – External Guide	The purpose of this guide is to assist employers in understanding the validation rules for the completion of employees' income tax certificates for 2022.
13 September 2021	PAYE-AE-06-G08 – Guide for Completion and Submission of Employees' Tax Certificates 2022 – External Guide	The purpose of this guide is to assist employers in understanding the rules for issuing and completing

		employees' income tax certificates (IRP5 and IT3(a)).
13 September 2021	PAYE-AE-06-G06 – Guide for Codes Applicable to Employees' Tax Certificates 2022 – External Guide	The purpose of this guide is to explain the relevant source codes to be used by the employer when issuing an employee income tax certificate.
13 September 2021	PAYE-GEN-01-G05 – Guide for Employers in respect of Employment Tax Incentive – External Guide	These guidelines have been compiled to assist employers in understanding the fundamentals of the Employment Tax Incentive Act, No. 26 of 2013, and must be read in conjunction with the Fourth Schedule to the Income Tax Act, No. 58 of 1962 and the Expanded Employment Tax Incentive Annexure.
13 September 2021	GEN-REG-01-G04 – How to Complete the Registration Amendments and Verification Form RAV01 – External Guide	This guide has been updated to include the deregistration process for payroll taxes via eFiling.
13 September 2021	UIF-GEN-01-G01 – Guide for Employers in respect of the Unemployment Insurance Fund – External Guide	This guide has been updated to include new thresholds which came into effect from 1 June 2021.
13 September 2021	PAYE-easyFile-G001 – e@SYFILE™ Employer Guide – External Guide	The guide has been updated with the 2021/2022 PAYE BRS for Employer Reconciliation.
13 September 2021	PAYE-GEN-01-G16 – Guide for Employers i.r.o. Employees Tax for 2022 – External Guide	The guide has been updated to include a new UIF contributions threshold with effect from 1 June 2021.
13 September 2021	EMP-GEN-02-G01 – A Guide for the Employer Reconciliation Process – External Guide	The guide has been updated with the PAYE 2021 interim filing season and PAYE administrative penalties.
13 September 2021	IT-AE-37-G02 – Step by Step Guide to complete your Trust return via eFiling – External Guide	The guide has been updated with trust changes for filing season 2021 in September 2021.
13 September 2021	IT-AE-36-G02 – Comprehensive Guide to the Income Tax return for Trusts – External Guide	The purpose of this document is to provide guidance for the completion of the income tax return for trusts (ITR12T).
13 September 2021	GEN-ENR-01-G06 – How to declare medical scheme contributions and insurance payments via eFiling – External Guide	The guide has been updated to include HTML form changes.
13 September 2021	GEN-ELEC-08-G01 – Guide to the Tax Compliance Status functionality on eFiling – External Guide	The guide has been updated with the HTML format of the TCR01 form.
13 September 2021	GEN-ELEC-15-G01 – Guide to the Entity Merge Functionality on eFiling – External Guide	The guide has been updated with the new eFiling merge form.
Other		
17 September 2021	Tax Alert - Retrospective approval of apportionment methodology	This alert discusses the Mukuru Africa (Pty) Ltd vs The Commissioner for SARS judgment, where it was decided that proviso (iii) to section 17(1) of the VAT Act was applicable to the Appellant and that a method of apportionment could only be approved by the Commissioner from the year of assessment within which the taxpayer applied to SARS for approval of such method.
14 September 2021	OECD – Tax Administration 2021: Comparative Information on OECD and other Advanced and Emerging Economies	The publication is structured around nine chapters that examine and comment on tax administration performance and trends up to the end of the 2019 fiscal year, and it includes a variety of examples supplied by tax administrations to highlight recent innovations and good practices.
10 September 2021	Tax Alert – VAT on the supply of electronic services: Where are we now?	This alert discusses SARS' activities in the Electronic Services Sector as well as providing a brief overview of VAT developments.
9 September 2021	Tax Alert – Denial of diesel refunds in respect of specific activities by a vendor	In *The Commissioner for the South African Revenue Service v Glencore Operations SA (Pty) Ltd (462/2020) [2021] ZASCA 111*, the Supreme Court of Appeal overturned a decision of the Pretoria High Court by ruling in favour of SARS' initial decision to disallow diesel refunds claimed by the vendor in respect of specific activities.
6 September 2021	Tax Alert – Expiry of existing section 72 rulings for agricultural pools	The alert discusses the arrangements or decisions made under the "previous" section 72 of the VAT Act rules which expire on 31 December 2021.
2 September 2021	Tax Alert – Green Paper: National Social Security Fund withdrawn	On Tuesday, 31 August 2021, the Department of Social Development withdrew the Green Paper on Comprehensive Social Security and Retirement Reform gazetted on 18 August 2021.

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