



Monthly Tax Update: January 2023

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Outline

Promulgation of 2022 Amendment Acts

SARS documents

- New and updated Interpretation Notes
- New and updated Rulings
- Updated Guide on ITR 12
- Jan 2023 SMME Connect
- Dec 2022 VAT Connect
- Nov 2022 Tax Practitioner Connect
- Enhanced Tax Directives system in line with new Par 2(2B) of the Fourth Schedule
- Updated Average Exchange rates

Promulgation of 2022 Amendment Acts

Amendment Acts promulgated on 5 January 2023:

- Tax Administration Laws Amendment Act No. 16 of 2022 (GG 47827 - 16/01/2022)
- Rates and Monetary Amounts and Amendment of Revenue Laws Act No. 19 of 2022 (GG 47825 - 19/01/2022)
- Taxation Laws Amendment Act No. 20 of 2022 (GG 47826 - 20/01/2022)

New and updated Interpretation Notes

[IN 10 Issue 4](#) - Skills development levy exemption: Public benefit organisations

[IN 18 Issue 5](#) - Rebate and deduction for foreign taxes on income

[New IN 126](#) - Extraordinary dividends treated as income or proceeds on the disposal of certain shares

IN 10 Issue 4 - Skills development levy exemption: Public benefit organisations

SDL Act section 4(c) - exempts any PBO contemplated in s 10(1)(cN) from the payment of SDL, provided the PBO –

- solely carries on qualifying PBAs; or
- solely provides funds to PBOs that solely carry on qualifying PBAs.

IN 18 Issue 5 - Rebate or deduction for foreign taxes on income

- Explains the scope, interpretation and application of s 6quat (rebate or deduction for foreign taxes on income).
- Updated for
 - legislative changes,
 - expanded view on the interpretation of “other than taxes contemplated in (1A)” in s 6quat(1C)(a) [with the result that certain foreign taxes on income from a foreign source may qualify for a deduction in circumstances where the specified requirements are met (see paragraph 6 of the Note for detail)]; and
 - other minor clarifications.

IN 126 Extraordinary dividends treated as income or proceeds on the disposal of certain shares

- S 22B and para 43A of the Eighth Schedule
- reflects income tax and tax administration legislation (as amended) at the time of publication (up to 2021 amendments).

Section 22B(2) and paragraph 43A(2)

- Section 22B(2) or para 43A(2) will apply if :
 - A company holding shares in another company disposes of any of those shares;
 - The shares are not disposed of under a deferral transaction; and
 - The company disposing of the shares held a qualifying interest in that other company at any time during the period of 18 months before the disposal of the shares.
- Any exempt dividend, to the extent that it is an extraordinary dividend, received by or accrued to a company in respect of shares disposed of or deemed to be disposed of under s 22B(4) or para 43A(4) must be –
 - included in the company's income if the company held the shares as trading stock;
 - taken into account as part of proceeds from the disposal of the shares if the company held the shares as capital assets.

Example (IN 126)

- Company A and Company B are residents and are not listed companies.
- Company A's year of assessment ends on 31 March.
- Company A held 50% of the equity shares in Company B since Y0.
- Company A disposed of these shares on 31 January Y3 for R5 million.
- At the beginning of the 18-month period before the disposal of the shares, the market value of the shares was R6 million.
- 17 months before the disposal of the shares, Company A received a dividend of R1 million in respect of the shares.

Result

- S 22B(2) or para 43A(2) applies, as the requirements of provisions are met:
 - Company A disposed of shares it held in Company B.
 - The shares were not disposed of under a deferral transaction.
 - Company A held a qualifying interest in Company B as it held at least 50% of Company B's equity shares.
 - The dividend of R1 million received by Company A is an exempt dividend as it is exempt from normal tax under s 10(1)(k)(i) and dividends tax under s 64F(1)(a).
- A portion of the exempt dividend received by Company A is an extraordinary dividend.

The extraordinary dividend is calculated as follows:

	R
Dividend received within 18 months before the disposal of the shares	1 000 000
<i>Less:</i> 15% × R6 million [15% of the higher of MV of R6 million (beginning of the 18-month period) or R5 million (date of disposal)]	(900 000)
Extraordinary dividend =	100 000

Tax effect

- If Company A held the shares as trading stock, it must include the extraordinary dividend of R100 000 in its income under s 22B(2) in its year of assessment ending on 31 March Y3.
- If Company A held the shares as capital assets, it must take the extraordinary dividend of R100 000 into account as proceeds from the disposal of the shares under paragraph 43A(2) in its year of assessment ending on 31 March Y3.
- The total amount to be included in Company A's income or taken into account as proceeds in determining a capital gain or loss, as the case may be, is R5 100 000 [R5 million (proceeds) + R100 000 (extraordinary dividend)].

New and updated Rulings

- [BGR 62](#) – VAT implications of securities lending arrangements
- [BCR 084](#) – Transfer of funds held in trust to a “beneficiary fund”
- Applicant: umbrella trust registered under the Trust Property Control Act for the purpose of, amongst others, managing various sub-trusts for the benefit of beneficiaries of each sub-trust.
 - s 55(1) – definition of “donation”;
 - s 58(1);
 - Para’s 35 & 38 of the Eighth Schedule.
- [BCR 085](#) – En commandite partnerships investing in photovoltaic solar energy plants
- Ruling on the interpretation and application of –
 - s 12B(1)(h) and (2); and
 - s 24H.
- [BPR 387](#) – s 9D Attribution of nett income to a public benefit organisation
- [BPR 388](#) - Application of the de-grouping rule following previous intra-group transactions under s 45

BCR 085 – En commandite partnership Ruling:

- a) Each limited partner regarded as having a proportionate interest in the generation assets acquired by the partnership based on their capital contribution to the partnership in relation to the total capital contribution made to the partnership.
- b) A limited partner will be entitled in terms of s 12B(2)(b) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets not exceeding 1 mw (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of 100% of the cost of the assets in the year of assessment in which the assets are brought into use.
- c) A limited partner will be entitled in terms of s 12B(2)(a) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets exceeding 1 mw (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of –
 - a) 50% of the cost of the assets in the year of assessment in which the assets are brought into use;
 - b) 30% of the cost of the assets in the 2nd year of assessment; and
 - c) 20% of the cost of the assets in the 3rd year of assessment.
- d) The cost of the foundations and structures designed for the installation of the s 12B(1)(h) assets that meet the criteria set out in the proviso to s 12B(1) will qualify for the same deductions as the assets they relate to.

Updated Guide on ITR 12

9 Dec 2022:

- ❖ Updates for the 2022 Filing Season Phase 2 (letter issued for change in provisional tax status, returns for future years);
- ❖ IRP5 income for foreign services rendered.

Change in provisional tax status

- Status may change on the SARS systems, based on the information declared on the ITR12 return.
- If converted
 - From a non-provisional taxpayer to a provisional taxpayer following assessment; or
 - from a provisional taxpayer to a non-provisional taxpayer following assessment,
 - you will receive a letter from SARS confirming your change in status.
- Note: You are required to evaluate your income on an annual basis to determine if you qualify as a provisional taxpayer for the year of assessment and if you are required to submit the compulsory provisional tax returns and payments as illustrated in the section above.
- See example in the Guide.

Income reflected on IRP5/IT3(a): foreign services

'Did you receive any form of remuneration for foreign services rendered' (Select 'Y' or 'N').

- only select yes if you received remuneration for foreign services rendered that is reflected on an IRP5/IT3(a) certificate.
- If yes, indicate if any portion of this remuneration was subject to tax in another country and complete additional information.

Note: If you received income for foreign services rendered and it is not reflected on any IRP5/IT3(a) certificate, select yes for the following question under the "Comprehensive" section of your return: 'Did you receive any foreign income (including remuneration) apart from foreign interest and foreign dividend income and excluding foreign capital gain transactions?'

Dec/Jan 23 SMME Connect

- USING A NON-REGISTERED TAX PREPARER
- VAT OBLIGATIONS FOR SMMEs
- TAX COMPLIANCE STATUS (TCS) VERIFICATION
- CORPORATE INCOME TAX (CIT)
- PAYMENTS
- SECURITY UPDATE ON EFILING



Jan 2023 SMME Connect

Controlling bodies recognised by SARS:

- Chartered Institute of Management Accountants (CIMA)
- Chartered Governance Institute of Southern Africa (formerly CSSA)
- Financial Planning Institute (FPI)
- Institute of Accounting and Commerce (IAC)
- SA Institute of Chartered Accountants (SAICA)
- SA Institute of Professional Accountants (SAIPA)
- SA Institute of Tax Practitioners (SAIT)
- The Association of Chartered Certified Accountants (ACCA)
- Southern African Institute for Business Accountants (SAIBA)



VAT deregistration

A vendor who has ceased trading and wishes to deregister must submit a written request to SARS by:

Sending an email to pcc@sars.gov.za if they are Tax Practitioners, or contactus@sars.gov.za if they are taxpayers; or

In person by appointment at a SARS branch.



Payment Arrangements

SMMEs who are unable to make a full payment at once must immediately contact SARS to request a payment arrangement to settle their debt through instalments. In certain circumstances, a compromise may be requested on your outstanding tax debt. You will need to discuss your financial position openly with SARS.

Payment arrangements can be made via SARS eFiling, or a request to debt management on the following e-mail address Sarsdebtmanagement2@sars.gov.za.



Dec 2022 VAT Connect

- 2022 Amendments
- VAT treatment of costs and disbursements
- Lease and sale of non-resident owned ships, aircrafts and rolling stock in South Africa
- Input tax on motor cars
 - IN 82
- Imported services vs electronic services
- Declaratory orders
- Independent persons serving on boards and committees of public entities (BGR 40 & 41)

Nov 2022 Tax Practitioner Connect

- Voluntary Disclosure Programme (VDP)
- VAT deregistration
- PAYE deregistration
- Closing a business/company
- Administrative penalties for late submission of income tax returns
- Tax crime



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