



TAX CAFÉ – JANUARY 2023

Individuals and other taxpayers

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Overview

- Thank you for your questions!
- Agenda for today:
 - Things worth knowing
 - Income Tax queries
 - VAT queries
 - Admin queries
 - Other
 - Open Mike Q&A

Things worth knowing!

- Hope you all had a great start 2023!
- All tax acts were promulgated 5 Jan 2023.
- Please don't forget SARS's auto registration for individual taxpayers.

Income Tax Queries received:

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Small business assets exclusion

CGT Exemption R1.8m A tax consultant advised one of my clients that due to his age (>55) when he sells a Trademark and royalties agreement, he will be able to claim the R1.8m. Kindly discuss the tax rules with regards to this exemption Kindly discuss the detail

Short answer, yes

- Long answer – lots and lots of proviso's and considerations. Core requirements:
 - Only applies to active business assets:
 - Any asset used exclusively for trade purposes.
 - Immovable property only to the extent used for trade.
 - Excludes financial instruments and assets held mainly to derive investment income
 - Must have held 10% of shares/partnership/sole prop for at least 5 years prior to the disposal.
 - Must be selling either due to ill health or being over 55.

Short answer, yes

- Long answer – lots and lots of proviso's and considerations. Core requirements:
 - Must recognise full capital gain within 24 months of the date of first disposal.
 - You can use it for multiple businesses.
 - Market value of total business (not just your share), must be less than R10 million
- <https://www.sars.gov.za/lapd-cgt-g01-comprehensive-guide-to-capital-gains-tax/> has extensive examples.

Delays in income tax refunds

Why does the Income tax refunds takes to long if all info has been submitted?

- Most common reasons:
 - Bank account verification outstanding.
 - Mismatch in third party information
 - Any others encountered?

PAYE directives

My (IT12) client applied for a lump sum directive in e-filing under his company (for himself) and then cancelled it when he saw how much tax would be paid. Now, when I submit his IT12 it is rejected by SARS because of the “outstanding” directive. He has been to SARS and asked for assistance and additionally submitted supporting documentation requesting the cancellation but the directive remains (is not deleted). I have refreshed data and am unable to submit the IT12. What now?

This does depend a little

- If for a severance benefit – then there is a fairly strict process to follow with SARS to get the directive cancelled (see here: <https://www.sars.gov.za/wp-content/uploads/Docs/TaxDirectives/IT-AE-41-G02-Guide-to-Complete-the-Tax-Directive-Application-Forms-External-Guide.pdf>)
- Otherwise ensure this process has been followed: <https://www.sars.gov.za/wp-content/uploads/Docs/TaxDirectives/IT-AE-41-G02-Guide-to-Complete-the-Tax-Directive-Application-Forms-External-Guide.pdf>
- If all else fails, contact the branch manager.

Outstanding EMP501's

I have a client with an old EMP501 outstanding, but no access to the previous owners payroll information- there is therefore discrepancies. How can I resolve this issue - with a SARS appointment?

Back pay

I wanted to find out about back pay. In a situation where an owner of a small company neglected to pay themselves a salary during their 1st year of trading, can they subsequently award themselves a back dated salary for that year and pay it after that financial year? I see that one needs to apply for a tax directive for the amount of PAYE to deduct on a back dated salary but I am battling to find guidance about what situations this could apply to.

Note this question could be interpreted as looking for a way to avoid tax in the company but its really just that the business owner would not have had to pay much tax if they had just stayed as a sole trader or if they had just paid themselves a small salary during the year, as the profits in the company are less than R100k. So it seems they are being unduly penalised if the company has to pay 28%. The returns for the company and for the individual have not yet been submitted.

Section 7A

From the section: “**antedated salary or pension**” means an amount of salary or pension which has become payable to any person under a permanent grant, made with retrospective effect, of a salary or pension or of an increase in a salary or pension, and which in terms of such grant is payable in respect of a period ending on or before the date on which the grant has become effective;

- So yes, it's possible.

Information requests

The SARS verification of assessment letter requests ALL documentation to be submitted but then lists examples that are sometimes unrelated to the return. Does ALL literally mean ALL documentation?

- This is an ongoing issue – SARS wants to leave the door open for future information requests, the taxpayer wants it as detailed as possible.
- In practice, a summary of the key issues and a list of top 10 invoices is generally sufficient for the verification.

VAT queries

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Admin queries

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Journal entries on SOA's

All the Journal entries on the PAYE (especially) and VAT statements - how can SARS make journal entries without the client's permission?

- This was covered in detail in the OTO's report on systemic issues (<https://www.taxombud.gov.za/wp-content/uploads/2022/03/SYSTEMIC-INVESTIGATION-REPORT-2020.pdf>)
- A lot of this boils down to how the SARS system works and the resultant misunderstandings between SARS and the taxpayer.

Penalties

How do we handle all the admin penalties? With RFR? I have tons of penalties for my provisional taxpayers that is not correct. (This includes incorrectly raised penalties on “late” submissions of returns)

- Yes – the Request for Remission is always the first step.
- SARS was aware of a number of penalties raised in error – some should be corrected by them.

When can I complain?

When are we allowed to do a official complaint when tax issues does not get resolve?

- If outside of the service charter timelines (<https://www.sars.gov.za/about/service-charter/>)
- If previously escalated with no response.
- If outside of TAA timelines.

Delays in ETI payments

SARS IS DELAYING THE ETI PAYMENT WHICH THEY OWE THE COMPANY FOR THE FEB 2022 YEAR END. WE ARE TAX COMPLIANT, WE HAVE SUBMITTED ALL DOCS THEY REQUIRED. WE HAVE SUBMITTED A REQUEST FOR PAYMENT VIA E FILING WHAT IS OUR NEXT STEP TO RECEIVE THIS MONEY OWING TO THE COMPANY

- Has the EMP501 been correctly completed?
- Escalate to branch manager/CMO.

Deleting a taxpayer

How to delete a taxpayer if everything is deactivated but the message is : you cannot delete because of a status request - how can that be deleted/cancelled to delete the taxpayer please?

Deceased Estate/Income Tax

- Does Prescription apply? How does one get hold of such old data? 88 yr old lady's deceased estate and SARS request tax returns for 1991 to 1998 (efiling started 1999), yet eFile record shows taxpayer up to date from 1999, yr eFiling started, to date? Should I phone 911 or a friend??

VDP unit

We submitted a VDP application in June 2021 and have not had any acknowledgement or response from SARS. What is the best way to follow this up?

- Directly with them as they operate separately from the rest of SARS.
- Otherwise need to follow the standard complaints process.
- Also ask your RCB to check turnaround times. There have been issues in the past.

Tax residency letters

How does one request a "Tax residency status letter" from SARS - my clients who are resident in other countries, need this for the tax Authorities in the Countries they are resident. Many thanks

- So where are they tax resident?
- As a non resident – send letter to SARS (<https://www.sars.gov.za/individuals/cease-to-be-a-resident/>)
- As a resident – see Guide (<https://www.sars.gov.za/wp-content/uploads/Ops/Guides/IT-AE-38-G01-Request-for-a-Certificate-of-Residence-External-Guide.pdf>) Particularly important for the DTA residency tests.

FIA applications

Why is SARS just disallowing the FIA when all documents have been submitted and the total rand amounts shown as readily available in SA is more than R500 000 of the amount requested? It has happened to me 3 times now, with a decline because the supporting documents have not been submitted.

- There are some procedural updates happening in this space, but has been known to happen if the documents aren't quite what they wanted. Communication is not always the best.

DTR01

What is the correct way to submit a DTR01 file to SARS for a jointly owned investment account? Should the income and expenses as well as any capital gains realized be apportioned to each member of the joint account evenly or are there other considerations that need to be taken into account?

Questions?



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