MARCH 2020

MONTHLY TAX UPDATE

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The Tax Faculty

OUTLINE

- Impact of COVID-19 on SARS Services
- Recent tax case judgments
- New interpretation note
- Updated interpretation note
- Discussion papers & documents
- Public notices
- New IT14 form
- New/updated SARS documents

Impact of COVID-19 on SARS Services

- Minimal visits to braches: use eFiling, mobiapp, call centre
- Maximum of 100 taxpayers allowed in a branch at a time
- Hand sanitizers, sanitisation, distance and protective gear
- SARS will no longer issue tax reference numbers for employment purposes and individuals should not to visit branches for this purpose – working on a digital solution (employers and prospective employer may register individuals online)
- Account related matters: use
    1. the contact centre
    2. Or email
        - Account balances: Accounts@sars.gov.za
        - Third party appointment queries: TPA@sars.gov.za
        - Journals: Journals@sars.gov.za
        - Statement of accounts: SOA@sars.gov.za
        - AA88's – AA88@sars.gov.za

Recent tax case judgments

Medtronic international v CSARS

Alfdav Construction v CSARS

Medtronic International v CSARS
(33400/19) [2020] ZAGPPHC (17 February 2020)

- Application brought to review and set aside the decision of the Commissioner for SARS not to remit interest in terms of s 39(7) of the Value Added Tax Act, 1991
- Considered
  - Scope of the record of proceedings in terms of Rule 53(1)(b) of the Uniform Rules of Court
  - Basis for determining whether information is relevant to the record of proceedings

Medtronic International v CSARS

Facts

- Applicant applied for and was granted relief under the Voluntary Disclosure Programme (VDP) provided for in s 225 to 233 of the Tax Administration Act
- The parties entered into a written voluntary disclosure agreement dated 14 June 2018
- The applicant subsequently applied to SARS for a remission of interest as provided for in s 39(7)(a) of the VAT Act, 1991, as read with Interpretation Note 61
- SARS refused the request, the applicant objected to the decision, SARS again refused

Medtronic International v CSARS

Facts

- Applicant then launched review proceedings in terms of Promotion of Access to Justice Act (PAJA), alternatively the principle of legality, the common law and s 33 of the Constitution as read with Rule 53 of the Uniform Rules of Court
- SARS' attorneys informed the applicant's attorneys on 6 June 2019 that SARS had dispatched the record of proceedings to the registrar of the court as contemplated by Rule 53(1)(b)
- Applicant, after having perused the record, formed the opinion that the record does not comply with Rule 53(1)(b) in that it "failed to contain the record of the proceedings relevant to [the respondent's] decision sought to be reviewed and set aside by [the applicant] in the main application, such as internal memoranda, directives, policy documents, records of deliberations and minutes of meetings."

Medtronic International v CSARS

Facts and findings

- Dispute around whether SARS had complied with the provisions of Rule 53(1)(b) in providing proper review records
- BUT: central to the review was the question whether s 39(7)(a) of the VAT Act could even be considered in circumstances where a taxpayer had committed to paying outstanding interest in terms of a VDP agreement
- Finding: SARS is correct in its contention that the documentation sought is irrelevant and need not form part of the Rule 53(1)(b) record

Medtronic International v CSARS

Findings on costs

- ‘Much of the dispute could have been avoided had the respondent, in its initial letter of 1 November 2018 clearly and unequivocally stated that it is statutorily precluded from even considering the request for the remission of interest and as such the respondent is refusing to even consider the merits of the remission of interest request. Instead it chose to create confusion by stating that “the Commissioner cannot accede to the request for the remission of interest liability…”. That the aforesaid created a confusion in the mind of the applicant’s legal representatives are clear as the objection noted on 10 December 2018 did not deal with whether the Commissioner could or could not consider a request for remission of interest, but rather whether the applicant benefitted financially.’

Medtronic International v CSARS

Findings on costs

- ‘the respondent's reply on 25 March 2019 brought clarity … unequivocally stated that “under the circumstances as the agreements entered into between the Commissioner and the respective Taxpayers remain in force, the Commissioner cannot consider the request for the remission of interest levied.” After receipt of this letter the applicant's legal representatives were fully aware that the refusal to consider the remission of interest request was based on a question of law.’

Medtronic International v CSARS

Findings on costs

- ‘The applicant… should have realised that its entire review hinges on a question of interpretation of legislation, which interpretation is the duty of the court and that no record to the extent that the applicant seeks is necessary for the prosecution and even the successful prosecution of its review’
- Application dismissed with costs

Alfdav Construction CC v CSARS

(399/2017) [2020] ZAECPEHC (11 February 2020)

- Application sought, under Rule 42 of the Uniform Rules, to amend a judgment to reflect that no penalties or interest would be payable in respect of certain VAT assessments, which had been reviewed and set aside
- Consideration: whether such amendment is possible when penalties and interest have not been raised in the main application

Alfdav Construction CC v CSARS

Facts

- A filed an application seeking an order to review and set aside certain VAT assessments for the periods 07/2009 to 12/2013 and that it be ordered to re-submit the VAT returns for the said periods within 60 business days from the date of the order
- The application was successful. The order granted by Chetty J was exactly in the same terms as set out by the applicant in its amended notice.
- BUT the issue of penalties and interest was not raised in the main action before Chetty J

Alfdav Construction CC v CSARS

Facts

- Applicant sought an order that the judgment handed down by Chetty J on 10 October 2017 be amended to read: “The applicant is ordered to re-submit, without incurring any penalties or interest in respect of such re-submission, the VAT returns for the said period within 60 business days of this order.”

Alfdav Construction CC v CSARS

Rule 42: Variation and Rescission of Orders

(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

Alfdav Construction CC v CSARS

Finding

- As the issue of penalties and interest was not raised in the original application, it will be impermissible to vary the order of Chetty J to incorporate interest and penalties.
- The application is dismissed with costs.

Canyon Resources (Pty) Ltd v CSARS
(68281/2016) [2020] ZAGPPHC (27 March 2019)

- Customs and Excise,1964 – diesel refund
- Application for setting aside determination made by Commissioner
- Appeal lodged against the Commissioner's decision to disallow diesel refund claims in respect of mining activities carried on by the applicant's contractor
- Considered
  - Whether the contractor carried on such activities under a "wet" or "dry" contract
  - Whether or not diesel was used in "post-recovery processes
  - Sufficiency of records for determining use of diesel
  - Role of expert evidence

New interpretation note

IN 113 Apportionment of surplus and minimum benefits (replaces GN 29)

IN 113 Apportionment of surplus and minimum benefits

- The Note
  - provides clarity on the tax treatment of the actuarial surplus allocations or distributions made to members, former members, existing pensioners and employers by funds under the provisions of sections 15B, 15C, 15D or 15E of the Pension Funds Act.
  - explains the tax treatment of distributions in terms of past surplus for the two different periods, before 1 January 2006 and on or after 1 January 2006, as well as the tax treatment of the future surplus distributions.
- General Note 29 and Addendum A thereto are hereby withdrawn.

Updated interpretation note

IN 53 (Issue 2 & 3) limitation of allowances for lessors of affected assets

IN 53 (Issue 2 & 3) limitation of allowances for lessors of affected assets

- The Note provides clarity and guidance on the application of s 23A, which ring-fences specified capital allowances granted to a lessor for certain aircraft, ships, machinery, plant, implements, utensils and articles (“affected assets”).
- Section 23A limits the deduction of specified capital allowances on affected assets to a lessor’s taxable income derived from the letting of these assets, before taking into account the specified capital allowances.
- Any specified capital allowances not allowed because of the limitation are carried forward to the next year of assessment and, subject to any s 23A limitation, are available for deduction against any net rental income from the letting of affected assets.
- Disallowed capital allowances are thus ring-fenced, and cannot be deducted against other taxable income earned by the taxpayer.

Discussion papers and documents

- Reviewing the tax treatment of excessive debt financing
- Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020
- Draft interpretation notes
  - Interest
  - Royalties
  - Provision of residential care for retired persons

Reviewing the tax treatment of excessive debt financing

- 2020 Budget proposal
  - To limit interest deductions for years of assessment commencing on/after 1 January 2021
  - Net interest expense deduction to be capped at 30% of taxable income before interest & capital allowances (EBITDA)
  - Will apply to companies in multinational groups
  - Carry-forward of excess for up to 5 years
  - Sub minimum amount
- Consultation: discussion document on the National Treasury website – closing date for comments: 17 April 2020

Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020

- Deadline for comment: 30 March 2020

- Transfer duty thresholds
- Small Business Corporation tax table
- Income tax tables for individuals: thresholds amended
- Rebates for individuals (s 6 and 6A)
- Tax threshold increased to R83 100
- Tax-free investment annual limit increased to R36 000

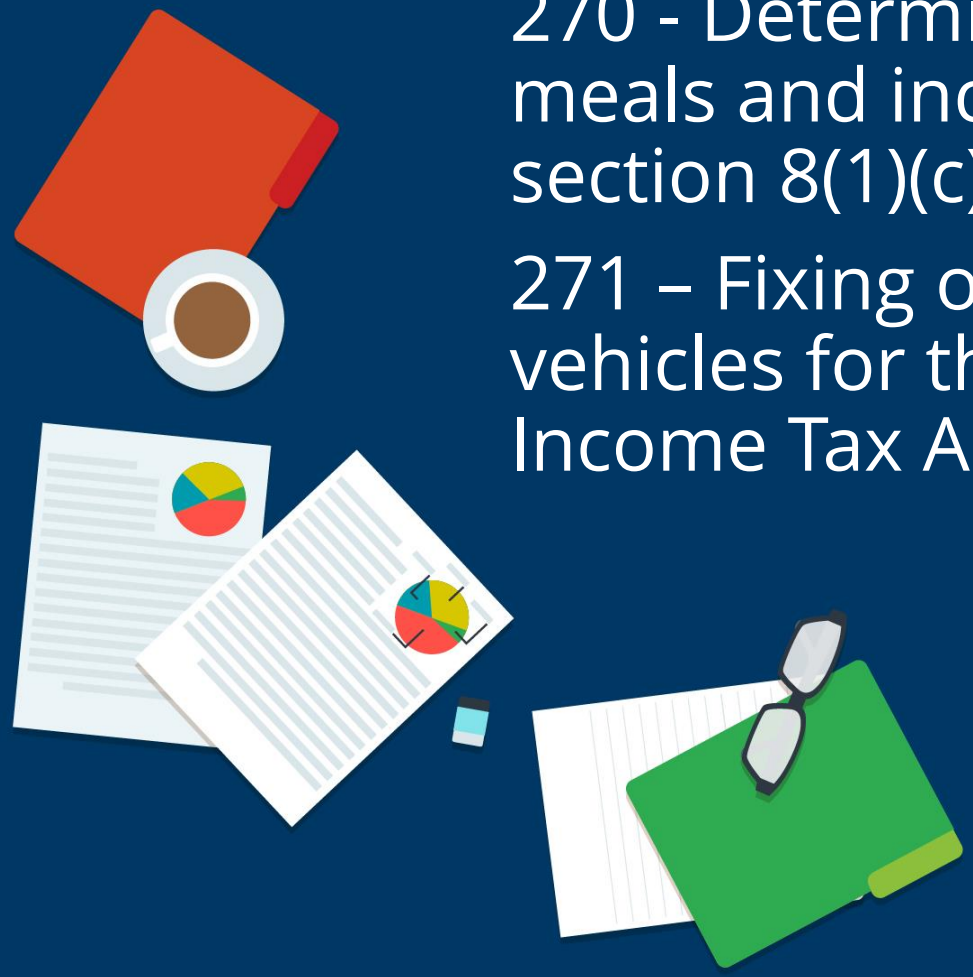
Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020

- Travel allowance table:
  - Section 8 of the Income Tax Act, 1962 amended
    - (A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to [R595 000] R665 000, or such other amount determined by the Minister by notice in the Gazette; and
    - (B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been [R595 000] R665 000, or such other amount determined by the Minister in terms of subitem (A)
  - Subsection (1) comes into operation and applies in respect of years of assessment commencing on or after 1 March 2020.

Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020

- Carbon Tax rate increased from R120 to R127 per ton of carbon dioxide equivalent of the greenhouse gas emissions of a taxpayer
  - Effective from 1 January 2020
- Increases in specific excise duties with effect from 26 February 2020

Public notices



270 - Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c) of the Income Tax Act, 1962

271 – Fixing of rate per kilometre in respect of motor vehicles for the purposes of s8(1)(b)(ii) and (iii) of the Income Tax Act, 1962

New IT14 form

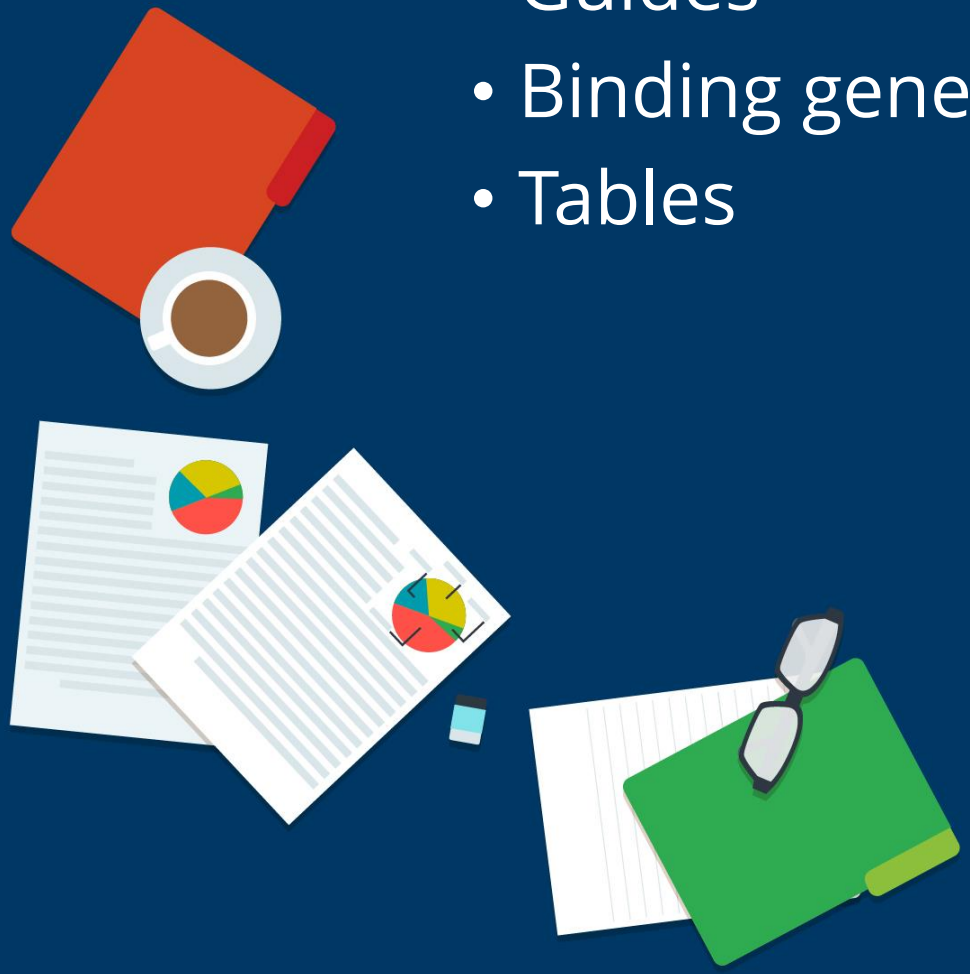
Comprehensive Guide: How to complete the ITR14 (Revision 8)

New IT14

- The old IT14 return is no longer accepted. Where you have previously requested and saved an old IT14, the old IT14 will be available for viewing; however, the new ITR14 will be presented for completion.
- If the Representative Taxpayer/Public Officer does not submit the ITR14 by the relevant deadline, the company will face an administrative penalty for noncompliance
- SARS has redesigned eFiling in an effort to embrace the benefits of emerging technologies and provide an optimized and secure digital environment.
- The new look is also intended to help promote voluntary compliance, reduce the administrative burden and provide you, our valued client, with a more intuitive and user-friendly experience. The redesigned functionality on eFiling will be implemented using a phased approach.

Recent SARS documents

- Guides
- Binding general rulings
- Tables



New/updated SARS guides

- Basic guide to s 18A approval (Issue 3)
- FAQ on foreign employment income exemption (Issue 3)
- ABC of Capital Gains Tax for Companies (Issue 9)
- ABC of Capital Gains Tax for Individuals (Issue 11)
- Dispute resolution: Guide on the rules (Issue 2)
- Guide on Mutual Agreement Procedures (Issue 3)
- VAT Connect 10

FAQ on foreign employment income exemption

Directive under para 10 of the Fourth Schedule: EG

- An individual (below 65 years of age) earns foreign employment income of R1,5 million.
- Based on the tax rates applicable to the 2020 year of assessment, the normal tax liability is calculated below.
- R1 250 000 will be exempt
- R250 000 is subject to normal tax and calculated as follows:

  R37062 + [(R250 000 – R205 900) × 26%]

  = R37 062 + R11 466 = R48 528 less the primary rebate of R14 958

  = R33 570

VAT CONNECT ISSUE 10 (MARCH 2020)
S 72 AMENDMENT

- *Background to amendments and withdrawals*

  Amendments to s 72 came into effect on 21 July 2019, intended to, among others –

  - narrow the extent of the Commissioner's discretion in making a decision under that provision;
  - clarify the circumstances under which the provision can be invoked; and
  - align the wording more generally with the policy intent of the VAT Act as a whole, as well as the intention behind any specific provisions in the VAT Act which might be applicable in the circumstances.

New requirements when applying for a decision under s 72

- Continue to follow the process applicable for VAT Rulings.
- Applications should contain the following:
  - Clear description of the difficulties, anomalies or incongruities that have arisen or that may arise when applying the VAT Act.
    - This means that the difficulty arises in connection with the application of the VAT Act itself. EG a request will not be accepted if it is intended to merely be an arrangement to resolve a past non-compliance with VAT laws, or to address issues that arise in the business because of a lack of capacity.
  - An indication of how the difficulties, anomalies or incongruities that have arisen or that may arise, will apply equally to other vendors or a class of vendors that may face the same or similar business circumstances.
  - Specify the relevant provisions in the VAT Act that causes the difficulties, anomalies or incongruities and the effect that is created when applying that law.
  - An explanation to support the view that the decision (if granted) will not reduce or increase the vendor's liability for VAT.
  - An explanation to show that the decision (if granted) will not be contrary to the intention of a specific provision of the VAT Act or the policy construct of the VAT Act as whole.

New requirements when applying for a decision under s 72

- New applications will be tested against the new wording of s 72 and will be applied strictly. Only those situations that give rise to genuine legislative difficulties, or that demonstrate clearly that anomalies or incongruities arise in applying a specific provision or the intended legislative purpose of the law in general will be accommodated.
- Applications that do not meet the above requirements will not be accepted.

Transitional rules and reconfirmations

- As the changes to the wording of s 72 only apply to new applications made on or after 21 July 2019, any arrangement or decision made by the Commissioner before that date remains valid until the stated expiry date of that decision or 31 December 2021, whichever is the earliest.
- As part of the transitional rules, a vendor may apply for a reconfirmation of any arrangement or decision issued before 21 July 2019 under the old wording of s 72 if it ceases to be effective between 21 July 2019 and 31 December 2021.

Transitional rules and reconfirmations

- Reconfirmation applications must be received by SARS no later than 2 months before the expiry date of that decision or arrangement. However, SARS may accept an application that is not within the 2-month timeframe in exceptional circumstances. Any such reconfirmation applications will be considered based on the old wording of the law, but the expiry date cannot be later than 31 December 2021.
- All arrangements or decisions made under the old wording of s 72 that do not have a stated expiry date, or the stated expiry date is after 31 December 2021, will expire on 31 December 2021 (without exception). This expiry applies whether the decision or arrangement was contained in a BGR, binding private ruling or binding class ruling.

Fees

- The law now provides that fees may be charged in respect of any application for a decision under s 72. However, this has not yet been implemented.
- SARS will communicate the prescribed fees and the date from which such fees may be charged in a public notice.

Binding general rulings

Updated as a result of the amendments to s 72:

- BGR 13 (VAT) (Issue 3) – Calculation of VAT for certain betting transactions
- BGR 34 (Issue 2) – Management of superannuation schemes - long-term insurers
- BGR 12 (Issue 3) – Input tax on the acquisition of a non-taxable supply of second-hand motor vehicles by motor dealers

BGRs related to the increase in the VAT rate on 1/4/18

- BGR 11 (Issue 3) – Use of an exchange rate
- BGR 26 (Issue 2) – VAT treatment of the supply and importation of herbs
- BGR 33 (Issue 2) – VAT treatment of the supply of and importation of vegetable oil
- BGR 45 (Issue 2) – Supply of potatoes
- BGR 35 (Issue 2) – VAT treatment of the supply and importation of frozen potato products
- BGR 38 (Issue 2) – VAT of the supply and importation of vegetables and fruit

Tables

- Average exchange rates
- Interest rates

Any Questions

- Please use the Question Portal on iLearn to post any questions.