



Monthly Tax Update: March 2021

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What we are covering this month

- 2021 Budget – Proposed tax amendments
 - Latest update
- Recent case law judgments
 - High Court
 - Medtronic International Trading SARL v CSARS
- SARS Documents and Notices

2021 Budget: further developments

- Daily allowance rates
 - Notice 173 in *Gazette* no. 44229 (5 March 2021).
- Travel allowance table
 - Notice 174 in *Gazette* no. 44229 (5 March 2021).
- UIF ceiling
 - Draft Notice
- Modernising the foreign exchange control system

Travel allowance table

Year ending 28 February 2022

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenance cost
<i>R</i>	<i>R per annum</i>	<i>c per km</i>	<i>c per km</i>
0 - 95 000	29 504	104.1	38.6
95 001 – 190 000	52 226	116.2	48.3
190 001 – 285 000	75 039	126.3	53.2
285 001 – 380 000	94 871	135.8	58.1
380 001 – 475 000	114 781	145.3	68.3
475 001 – 570 000	135 746	166.7	80.2
570 001 – 665 000	156 711	172.4	99.6
Exceeding 665 000	156 711	172.4	99.6

Travel allowance tables

	<u>2020/21</u>			<u>2021/22</u>			<u>2021/22 v 2020/21</u>		
<u>Value of the vehicle</u> <u>(including VAT)</u>	<u>Fixed cost</u>	<u>Fuel cost</u>	<u>Maintenance</u> <u>cost</u>	<u>Fixed cost</u>	<u>Fuel cost</u>	<u>Maintenance</u> <u>cost</u>	<u>Fixed cost</u>	<u>Fuel cost</u>	<u>Maintenance</u> <u>cost</u>
R	R per annum	c per km	c per km	R per annum	c per km	c per km	R p.a.	c per km	c per km
0 - 95 000	31 332	105,8	37,4	29 504	104,1	38,6	-6%	-2%	3%
95 001 – 190 000	55 894	118,1	46,8	52 226	116,2	48,3	-7%	-2%	3%
190 001 – 285 000	80 539	128,3	51,6	75 039	126,3	53,2	-7%	-2%	3%
285 001 – 380 000	102 211	138	56,4	94 871	135,8	58,1	-7%	-2%	3%
380 001 – 475 000	123 955	147,7	66,2	114 781	145,3	68,3	-7%	-2%	3%
475 001 – 570 000	146 753	169,4	77,8	135 746	166,7	80,2	-8%	-2%	3%
570 001 – 665 000	169 552	175,1	96,6	156 711	172,4	99,6	-8%	-2%	3%
Exceeding 665 000	169 552	175,1	96,6	156 711	172,4	99,6	-8%	-2%	3%

Fixed travel rate

- No tax is payable on an allowance paid by an employer to an employee up to the rate of R3,82 (was R3,98) per kilometre, regardless of the value of the vehicle or the distance travelled.
- NB: this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.
- Full tax (remuneration) on reimbursement at more than R3,82/km.



UIF

	2020/21	2021/22
Rate (employer + employee)	1% + 1%	1% + 1%
Monthly remuneration threshold	R14 872	R17 712*

*Proposed in the 2021 Budget.
Draft Notice published 24/2/21(amended).
Implementation date to be advised

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Exchange Control Circulars published 26 February 2021

- 5/2021: Statement on exchange control
- 6/2021: Emigration - phasing out the concept of emigration as recognised by the South African Reserve Bank
- 7/2021: Review of approval conditions applicable to SA corporates with a primary listing offshore including dual-listed corporate structures



Modernising the foreign exchange control system (SARS website – 1 March 2021)

As outlined in Annexure E of the 2020 Budget Review, Government will be modernising the foreign exchange control system. The Foreign Exchange Control changes, together with the amendments in the Taxation Laws Amendment Act, 2020, will impact the Tax Compliance Status (TCS) requests for Foreign Investment Allowance (FIA) and Emigration as well as the withdrawal of retirement funds as follows:

- The concept of “emigration” and the South African Reserve Bank’s approval process via the MP336(b) form will be terminated. Thereafter, for tax purposes, only the event of an individual “ceasing to be a resident for tax purposes” in South Africa, will be relevant.
- All applications, where the applicant had their MP336(b) attested by an Authorised Dealer on or before 28 February 2021, will still be able to apply for a TCS in respect of “Emigration”, during the period until 28 February 2022, in terms of the current procedure dealing with emigration for exchange control purposes.
- All applications for TCSs for individuals ceasing to be a tax resident, from 1 March 2021 onwards, other than those under the previous bullet, will be processed by SARS based on a new dispensation where SARS will confirm that the taxpayer has ceased to be a resident for tax purposes. An MP336(b) will no longer be required as part of the TCS application process. The taxpayer must still apply via the SARS TCR01 “Emigration “Application.



Modernising the foreign exchange control system (cont.)

- From 1 March 2021 onwards, taxpayers will be able to access their applicable retirement benefits if they can prove, to the fund, that they have been non-resident for tax purposes for an uninterrupted period of three years and an applicable Tax Directive is issued to the fund by SARS. Taxpayers must provide the applicable TCS to the Authorised Dealers, as well as documentation from the fund that indicates or confirms the final amount paid to the taxpayer, before any transfers can be effected.
- The current process of controlling or blocking an emigrant's remaining assets in a special “blocked funds account” will fall away and all transfers from these will be handled as normal fund transfers in line with any other FIA transfer.
- A TCS in respect of FIA will be required for all transfers of listed securities from a securities register in South Africa to a securities register outside South Africa (The effective date of this will be communicated by the South African Reserve Bank).



Amendments to retirement funds

Effective from 1 March 2021

- Compulsory annuitisation of Provident Funds
 - Except
 - vested benefits as at 28 February 2021 plus growth on that benefit
 - where a member's interest is R247 500 or less
 - provident fund members 55 or older on 1 March 2021 and remaining a member of the same provident fund.
- Tax-free transfers between retirement funds
 - Pension, pension preservation, provident, provident preservation
 - Retirement annuity funds are restricted.
- Emigration withdrawals – 3-year block
- Retirement Annuities
 - Discontinued contributions: R 7000 increased to R15 000 on 1 March 2021 as prescribed (draft Notice dated 24 February 2021).



Amendments to retirement funds

Effective from 1 March 2021 (cont.)

- Commutation of living annuity for terminating trusts
 - Insertion in the definition of “living annuity” (s 1):
 - (eA): in anticipation of the termination of a trust, the value of the assets referred to in paragraph (a) must be paid to the trust as a lump sum pursuant to that termination.
 - Para (a) refers to the value of assets specified in the annuity agreement and held for the purposes of providing the annuity.
 - Allows the provider of the living annuity to pay a lump sum to a trust as part of the process of terminating the trust.
 - Explanatory Memorandum, 2020:
 - Makes provision for the termination of a trust as the word “death” in the definition of “living annuity” is problematic as trusts cannot die, but can only be terminated. Therefore, if the word “die” is only limited to the death of a natural person, there is an anomaly because when trust that was initially nominated as the owner of a living annuity upon the death of the original annuitant is subsequently terminated, such trust is unable to make payments to its nominees.
 - Insertion of paragraph 3B in the Second Schedule - provides that this lump sum amount will be deemed to have accrued to the trust immediately prior to the termination of the trust.
 - It will therefore be taxable in the trust immediately prior to the date of termination of the trust and not in the hands of the beneficiary. The lump sum will be taxed according the retirement/death tax table.
 - Section 25B was amended to exclude a lump sum benefit payable in terms of the new paragraph 3B.



Medtronic International Trading S.A.R.L. v CSARS ZAGPPHC (33400/2019) (15 February 2021)

Application sought the following relief:

1. That it be declared that:
 - 1.1. the provisions ss 225 to 233 of the Tax Administration Act (TAA) relating to voluntary disclosure programmes (VDPs) do not prohibit a request for remission of interest in terms of s 39(7) of the Value-Added Tax Act, notwithstanding a VDP agreement having been entered into;
 - 1.2 notwithstanding a prior VDP agreement having been entered into, the respondent has a statutory duty to consider, adjudicate and decide on a request for the remission of interest in terms of s 39(7)(a) of the VAT Act.
2. That the following decisions of the respondent be reviewed and set aside in terms of the Promotion of Administrative Justice Act, Act 3 of 2000 ("PAJA"), alternatively the principle of legality, and remitted back to SARS for reconsideration, namely:
 - 2.1. The decision set out in the respondent's letter dated 1 November 2018, of which the applicant was informed per e-mail on 20 November 2018, to refuse to consider the applicant's request for remission of interest in terms of s 39(7)(a) of the VAT Act;
 - 2.2. Alternatively, the respondent's decision set out in its letter of 13 March 2019, of which the applicant was informed per e-mail on 28 March 2019, to refuse to withdraw its decision referred to in paragraph 2.1 above and to decide that it cannot consider the request for the remission of the interest levied.
3. That the respondent be ordered to consider, adjudicate and decide on the applicant's request for remission of interest in terms of s39(7)(a) of the VAT Act, dated 12 October 2018, and inform the applicant of its decision within 15 days of the order being granted. SARS' decision may not be contrary to the declaratory relief as set out above; ...



Medtronic International v CSARS

Facts

- Applicant's bookkeeper defrauded and falsified VAT returns between June 2004 and May 2017.
- Applicant applied for and was granted relief under the VDP provided for in the TAA.
- The parties entered into 2 voluntary disclosure agreements in June 2018 for the payment of VAT of R286m and interest of R171m (penalties of R172m had been waived).
- The applicant subsequently applied to SARS for a remission of interest under s 39(7)(a) of the VAT Act, as read with Interpretation Note 61. SARS refused the request.
- An objection was raised on behalf of the Applicant on 10 December 2018 to the refusal to accede to the request for remission of interest liability. SARS disallowed the objection on 25 March 2019 on the basis that " . . . 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 the interest levied."
- As a consequence, the Applicant launched review proceedings in terms of ss6(2)(d), 6(2)(e)(iii), 6(2)(f)(ii), 6(2)(g) and 6(3) of the Promotion of Access to Justice Act (PAJA).



Medtronic International v CSARS (Cont.)

- According to the applicant, after it had requested SARS to waive the interest in the course of the VDP discussions, the VDP unit responded in April 2018, that SARS was prepared to waive all understatement and late payment penalties, as it did not have the authority to waive the interest arising from the underpayment of the VAT.
- SARS contended that it agreed with the applicant that it would grant the applicant relief in respect of the understatement and administrative non-compliance penalties in the amount of R172million. In addition, SARS would not pursue any criminal action for any of the offences in respect of the default.
- The applicant contended that it was entitled to a 'waiver' of interest under s39(7)(a) of the VAT Act read with IN61.
- SARS' view was that the applicant's request for waiver of the interest was invalid as the VDP agreement overrode the waiver relief under a tax Act.



Medtronic International v CSARS (Judgment)

- The question of 'whether SARS may consider a request for the remission of interest in terms of s 39(7)(a) of the VAT Act once a taxpayer has agreed to pay such interest in terms of a VDP contemplated by s 230 of the TAA' ... comes down to the respondent or the applicant's interpretation of s 39(7)(a) of the VAT Act and to an extent s 187(6) of the TAA.



TAA s 229. Voluntary disclosure relief

- Despite the provisions of a tax Act, SARS must, pursuant to the making of a valid voluntary disclosure by the applicant and the conclusion of the voluntary disclosure agreement under s 230 —
 - (a) not pursue criminal prosecution for a tax offence arising from the 'default';
 - (b) grant the relief in respect of any understatement penalty to the extent referred to in column 5 or 6 of the understatement penalty percentage table in s 223; and
 - (c) grant 100% relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 or a penalty imposed under a tax Act, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return.
- The original version also provided for the relief of interest.



TAA: the VDP agreement

S 230. The approval by a senior SARS official of a voluntary disclosure application and relief granted under s 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax debt in the prescribed format and must include details on -

- (a) the material facts of the 'default' on which the voluntary disclosure relief is based;
- (b) the amount payable by the person, which amount must separately reflect the understatement penalty payable;
- (c) the arrangements and dates for payment; and
- (d) relevant undertakings by the parties.

S. 232. Assessment or determination to give effect to agreement

- (1) If a voluntary disclosure agreement has been concluded under s 230, SARS may, despite anything to the contrary contained in a tax Act, issue an assessment or make a determination for purposes of giving effect to the agreement.
- (2) An assessment issued or determination made to give effect to an agreement under s 230 is not subject to objection and appeal.



Medtronic International v CSARS (Judgment)

[23] The VDP agreement is governed by Part B of Chapter 16 of the TAA. Critical is the fact that the agreement makes provision that the Tax Act will prevail if conflict arises between the terms of the agreement and the Tax Act: 'Where any term, obligation or benefit under this Agreement conflicts with any provision of Part B of Chapter 16 of the TA Act, the provisions of the TA Act shall prevail.'

[38] Now turning to the VDP agreement this process is not subject to an appeal nor an objection. Factually, this is an agreement between parties governed by the prescripts of the TAA ss225 to 233. Conspicuously, these sections make provision and spell out that no objection nor appeal is permitted, however, **it is silent on whether remission is permitted, so the applicant advanced. Further, if it is not legislated and cannot be interpreted therefrom, then that could have never been the intention of the legislature** [*Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 SCA at para [26]]. I am in agreement with these submissions and this is fortified by the recent judgment of the SCA in *CSARS v United Manganese of Kalahari (Pty) Ltd* 2020 (4) SA 428 (SCA) 433 at para [8].



Medtronic International v CSARS (Judgment)

Order

1. The provisions of Chapter 16, Part B, s 225 to 233 of the TAA relating to voluntary disclosure programmes do not prohibit a request for remission of interest in terms of s 39(7) of the VAT Act notwithstanding a VDP agreement having been entered into

(a) notwithstanding a prior VDP agreement having been entered into, the respondent has a statutory duty to consider, adjudicate and decide on a request for the remission of interest in terms of section 39(7)(a) of the VAT Act.



Interest on tax debt

- TAA provisions not yet activated, except s 187
 - Proclamation 51 of 2012 (Government Gazette 35687 of 14 September 2012):
 - certain parts of s 187 came into force on 1 October 2012 when the TAA was implemented
 - amendments in schedule 1 of the TAA to any of the provisions of a tax Act relating to interest did not take effect at that date
- Income Tax (ss 89(2), 89bis & 89quat) and VAT Act (s 39) provisions still in force



Interest provisions in the TAA

- Section 187 of the TAA currently only applies insofar as it relates to interest on
 - An understatement penalty (s 187(3)(f))
 - A tax refund (s 187(3)(g))
 - An erroneous overpayment by a taxpayer (s 187(3)(h))
 - A jeopardy assessment (s 187(5)).
- Remittance rules
 - (6) If a senior SARS official is satisfied that interest payable by a taxpayer under s 187(1) is payable as a result of **circumstances beyond the taxpayer's control**, the official may, unless prohibited by a tax Act, direct that so much of the interest as is attributable to the circumstances is not payable by the taxpayer.
 - (7) The circumstances referred to in subsection (6) are limited to -
 - (a) a natural or human-made disaster;
 - (b) a civil disturbance or disruption in services; or
 - (c) a serious illness or accident.
 - (8) SARS may not make a direction that interest is not payable under s 187(6) after the expiry of 3 years, in the case of an assessment by SARS, or 5 years, in the case of self-assessment, from the date of assessment of the tax in respect of which the interest accrued.



Income Tax Act interest (ITA s 89(2))

- If a taxpayer fails to pay tax in full within the period for payment, interest shall be paid
 - at the prescribed rate (currently 7%)
 - on the outstanding balance of such tax
- simple interest – only on the tax
- for each completed month during which a portion of the tax remains unpaid
 - the month is reckoned from the date for payment of the tax
 - interest is added at end of each month
- Remission:
 - "unless the Commissioner having regard to the circumstances of the case grants an extension of such period and otherwise directs"



Interest on late payment of provisional tax or PAYE (ITA s 89bis(2))

- Interest at the prescribed rate
 - "on so much of such amount as remains unpaid" (simple interest)
 - for period for which the amount remains unpaid
- Remission
 - "unless the Commissioner having regard to the circumstances of the case otherwise directs"



Interest payable by/to provisional taxpayers

(ITA s 89quat)

- Interest is payable by a provisional taxpayer if the normal tax liability exceeds the 'credit amount' (all taxes paid by the effective date) and -
 - If an individual or trust, taxable income for the year of assessment exceeds R50 000; or
 - If a company, taxable income for the year exceeds R20 000.
- Interest is payable at the prescribed rate, from the 'effective date' to the date of assessment.
- Grounds for remittance:
 - Where the Commissioner having regard to the circumstances of the case is satisfied that the interest is payable as a result of circumstances beyond the control of the taxpayer; or
 - An individual taxpayer: in the first year of being a provisional taxpayer if the *circumstances warrant* remission.



Interest on VAT

(VAT Act s 39)

- If tax is paid late -
 - interest is charged on the unpaid amount of tax for each month or part of a month that tax is not paid
 - simple interest at the prescribed rate.
- Remittance (s 39(7)):
 - Where the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment ...
 - (a) was due to **circumstances beyond the control of the said person**, s/he may remit, in whole or in part, the *interest* payable in terms of this section; or
 - (b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, s/he may remit, in whole or in part, any *penalty* payable in terms of this section.



Interpretation Note 61 (29 March 2011)

- **Circumstances beyond the control of a person**
 - generally those that are external, unforeseeable, unavoidable or in the nature of an emergency, such as an accident, disaster or illness which resulted in the person being unable to make payment of VAT when due.
- The person bears the burden of proving that the facts and circumstances of the case meet the requirements of the applicable law for the remission of the interest in whole or in part.
- Each case will be considered on its own merits



Circumstances beyond a person's control

IN 61 Examples

- Destruction by fire, flood or other natural or human-made disaster of the person's place of business records.
- Key personnel not available due to sudden resignation, ill health or death.
- A person has initiated an electronic funds transfer (EFT) payment timeously and such payment is not made due to a banking system failure.



Circumstances beyond a person's control

SARS Guide for Vendors

Only the following circumstances may be considered to be beyond the vendor's control:

- natural or human made disaster
- civil disturbance or disruption in services
- serious illness or accident



Circumstances not considered to be beyond a person's control - IN 61 Examples

- A person's financial position.
- Failure to timeously initiate an EFT payment instruction to a financial institution.
- A misunderstanding or lack of knowledge of a VAT liability.
- Misconduct on the part of the person or any other person under the control or acting on behalf of that person.
- Negligence on the part of the person or any other person under the control or acting on behalf of that person.



Five year limitation on refund of VAT interest

IN 61

Even if the criteria for remission have been met, a refund of interest cannot be made in terms of s 44(2) read with s 44(3) of the VAT Act where the application for the refund is made more than five years from the date on which the payment of interest was made.

An application for the remission of interest resulting in a refund that will fall within the aforementioned five year limitation will not, therefore, be considered by the Commissioner. Furthermore, no refund will be made where the Commissioner is satisfied that the payment of interest was made in accordance with the practice generally prevailing when the payment was made, unless the claim for the refund is received by the Commissioner within six months of the date of payment.



Request for remission of VAT interest

IN 61

- Any application for remission of interest should be in writing and accompanied by the following supporting information and documentation:
 - name, address and VAT registration number of the person
 - tax periods and payment dates involved
 - full details of circumstances beyond the control of a person that prevented the person from complying
 - supporting documentation such as the trace number assigned to the transaction as proof that the person timeously initiated the EFT payment
 - complete history of events, including what measures were taken and when they were taken to resolve the non-payment
 - name, address and telephone number where the person may be reached if further information or explanation is needed



Request for remission of VAT interest: Factors considered by the Commissioner

IN 61

- Once satisfied that the circumstances are beyond the person's control, SARS will consider the following factors in deciding the extent of the remission of interest:
 - Does the person have a satisfactory history of compliance (eg, have VAT returns been filed and payments made on time)?
 - Full remission may be considered for a person with a consistently good payment record.
 - Partial remission may be considered, where there is repeated failure by the person to make payment.
 - Has the person paid the VAT in question as soon as practically possible?
 - In considering the extent of any remission of interest, it is also necessary to consider what steps were taken, if any, to ensure that the circumstances causing late payment do not recur in the future.
 - What facts and circumstances prevented the person from paying the VAT amount on the due date?
 - How did the facts and circumstances prevent the person from complying?
 - Has the circumstance occurred before? Were measures put in place to ensure that this situation does not recur in future?
 - Any other information or documentation that the Commissioner may consider relevant in assessing the application.



Seeking remission of interest (SARS website)

- Request remission on the prescribed form (RFR01).
- VAT & PAYE interest on late payments
 - IN 61: Decision on application
 - The Commissioner will respond in writing to the person's application for remission of interest. Should the Commissioner decide not to remit the interest, either in whole or in part, a written notice will inform the person of the reasons for the decision and the person's right to object.
 - SARS Guide for Vendors
 - RFR is the only remedy available to a vendor to dispute interest on late payment of VAT.
 - A vendor may not allowed lodge an objection to dispute interest on late payment or a decision by SARS to disallow a request for remission.
- UIF& SDL interest on late payments
 - cannot be disputed at any level



SARS Documents and Notices

- Rental income
- Preparation for annual employers filing season
- Guides
 - Estate Duty Implications on Key Man Policies
 - Employers Guide to the AA88 Third Party Process
 - Corporate Income Tax Guide
- Interpretation Notes
 - In 12 - Recoupment: Assets in a deceased estate *Withdrawn 4 March 2021*
 - IN 114 - Interaction between 25B(1) and s 7(8) in case of conflict, inconsistency or incompatibility
 - Draft Interpretation Notes
- General Notes withdrawn



IN 114 (2 March 2021)

Interaction between 25B(1) and s 7(8) in case of conflict, inconsistency or incompatibility

- Sections 25B and 7(8) are applied inconsistently by taxpayers. The interaction of these two sections therefore needs to be considered and analysed.
- The Note is intended to provide clarity on the interpretation and application of the words “subject to the provisions of s 7” in s 25B(1) and, more specifically, whether s 7(8) or s 25B(1) applies if there is a conflict, inconsistency or incompatibility between the sections.



Section 25B(1) Taxation of trusts and beneficiaries

Any amount (other than an amount of a capital nature which is not included in gross income or an amount contemplated in para 3B of the Second Schedule) received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall,

subject to the provisions of s 7,

to the extent to which that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to that amount during that year, be deemed to be an amount which has accrued to that beneficiary, and to the extent to which that amount is not so derived, be deemed to be an amount which has accrued to that trust.



Section 7(8)(a)

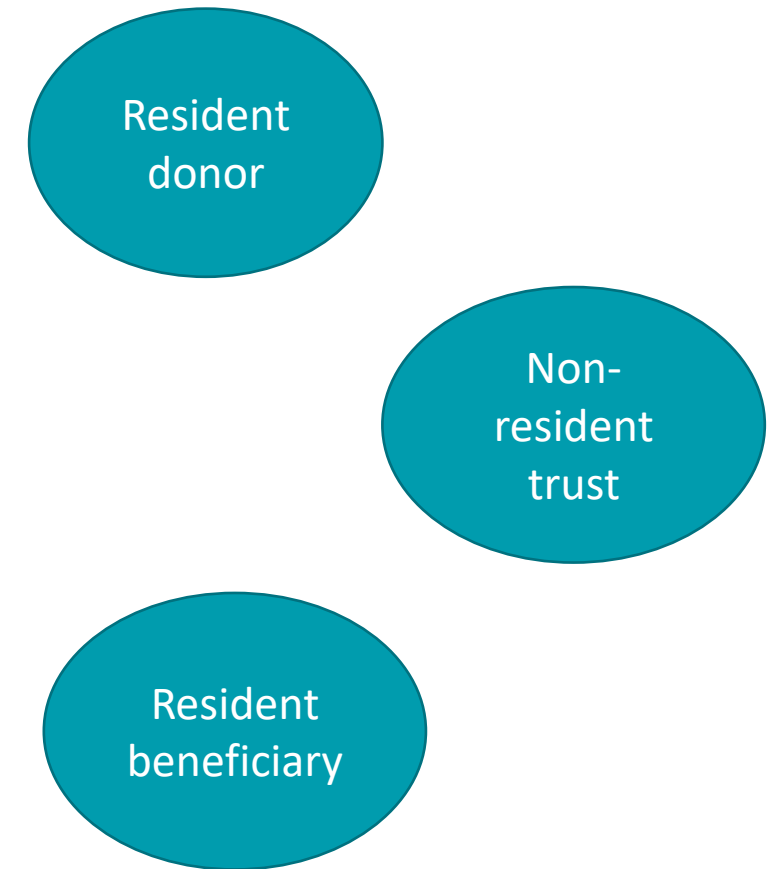
Where by reason of or in consequence of any donation, settlement or other disposition ... made by any resident, any amount is received by or accrued to any person who is not a resident ...

which would have constituted income had that person been a resident, there shall be included in the income of that resident so much of that amount as is attributable to that donation, settlement or other disposition.



IN 114

- Conflict, inconsistency or incompatibility between the sections may occur when an amount received by or accrued to a non-resident discretionary trust by reason of or in consequence of a donation, settlement or other disposition by a resident, which would have constituted income if the non-resident were a resident, is vested in a resident beneficiary by the trustees of the non-resident discretionary trust.
- Consideration of other sections in the Act that may apply to the vesting of an amount in a resident beneficiary by the trustees of the non-resident discretionary trust is beyond the scope of this Note.



IN 114

- Case law confirms that “subject to the provisions of s 7” in s 25B(1) means that if there is a conflict, inconsistency or incompatibility between s 25B(1) and s 7(8), s 7(8) is given dominance and will prevail.
- The starting point in determining whether the “subject to” clause in s25B(1) has an effect is to establish whether there is a conflict between s 7(8) and s 25B(1).
- This will be the case where both sections potentially apply to the same income stream and, if both sections are applied, the amount is potentially economically taxed twice given that –
 - s 7(8) requires that any amount received by or accrued a non-resident, which would have constituted income had the non-resident been resident, must be included in the donor’s income, and
 - s 25B(1) deems an amount vested in the beneficiary to have accrued to the resident beneficiary and therefore it would be included in the resident beneficiary’s gross income.



IN 114

- The words “subject to the provisions of s 7” in s 25B(1) must be interpreted to mean that to the extent that both s 7(8) and s 25B(1) potentially apply, only s 7(8) must be applied. Section 25B(1) will apply to the balance of any income not derived in consequence of a donation, settlement or other disposition.



Example (IN 114)

- X, a resident individual, lent R1 million to a non-resident discretionary trust interest free at the beginning of the year of assessment. Had the trust borrowed the funds from a financial institution, it would have paid interest at a market-related rate of 10% a year.
- The trust used the funds to invest in a foreign bond, which produced an interest return for the trust of 12% a year during the same year of assessment.
- Before the end of the year of assessment, the trustees took the decision to vest the full amount of the interest derived from the bond of R120 000 in Y, a resident beneficiary.
- The official rate of interest is 4,5%. X is a connected person to the non-resident discretionary trust.



Result:

- Income received by or accrued to the trust = R120 000 (R1 million × 12%).
- Of this amount, R100 000 (R1 million × 10%) was derived in consequence of the interest-free loan by X to the trust (donation, settlement or other disposition). This amount would have constituted 'income' as defined in s 1(1) had the trust been a resident. Therefore s 7(8) applies.
- Under s 7(8), which is triggered before s 25B when the amount is initially received by or accrued to the trust, R100 000 is deemed to be received by or accrued to X.
- Under s 25B(1) the balance of R20 000 is deemed to accrue to Y.
- Despite Y receiving R120 000, only R20 000 of that amount will comprise income in the hands of Y.
- It would be incorrect to apply s 25B and say that because the amount is deemed to accrue to the resident beneficiary, s 7(8) does not apply because, after applying s 25B, no amount has been received by or accrued to the trust.



What about s 31?

- The loan by X to the non-resident discretionary trust is potentially an 'affected transaction' for purposes of s 31(1). (Between resident & non-resident, who are connected persons and the loan bears interest at 0% - not an arm's length rate. S 31 applies if there is an affected transaction and it results in a 'tax benefit'.)
- If the amount attributed under s 7(8) is less than the arm's length return which is required for purposes of s 31, the difference (shortfall) between the two amounts will be included in X's taxable income calculation under s 31(2) and will be deemed to be a donation made by X under s 31(3) .
- In this example, the amount included in X's income under s 7(8) is R100 000, which represents an arm's length return on the loan. Consequently no additional adjustment will be required under s 31.



What about s 7C?

Section 7C(3)(a) stipulates that if a trust incurs interest at less than the official rate in respect of a loan, advance or credit referred to in s 7C(1) or (1A) (whether this is the case will depend on the facts of the case, facts not given in this example to make that determination), an amount equal to the difference between –

- the amount incurred by that trust during a year of assessment as interest in respect of that loan, advance or credit (nil in this example as the loan was interest-free); and
- the amount that would have been incurred by that trust at the official rate of interest (4,5% in this example)

must, for purposes of donations tax, be treated as a donation:

$R1 \text{ million} \times (4,5\% - 0\%) = R45 \text{ 000}$ donation deemed to be made by X made to the trust on the last day of that year of assessment of that trust.



Draft Interpretation Notes

- 59 (Issue 2) – Tax treatment of the receipt or accrual of government grants
- New – Deductions in respect of improvements to land or buildings not owned by the taxpayer



General Notes withdrawn

- General Note 9 – Purchase of annuities and transfer to retirement annuity fund at retirement
- General Note 9A – Purchase of annuities and transfer to retirement annuity fund at retirement
- General Note 12 – Retirement from employment
- General Note 13 – Retirement from employment
- General Note 18 (Issue 2) – Providing Annuities on Retirement from Employment Decision
- General Note 18A (Issue 2) – Providing Annuities on Retirement from Employment Decision
- General Note 21 (Issue 2) – Application for tax directives (benefits that include pre- 1 March 1998 vested rights)
- General Note 22 - Benefit fund as envisaged by paragraph (c) of the definition (Archived)

Rental income

SARS website 11 March 2021

- SARS wishes to advise property owners whose properties are located in SA and who host fee-paying guests that the rental income they receive must be declared in their income tax return.
- This is the same principle that applies to any person who has rental income from letting out their property as a home-owner, placing them under the same obligation to declare such rental income to SARS.
- A property owner is also required to register as a VAT vendor with the accompanying obligations, if the short-term rental income exceeds R1-million in a 12 month period.
- SARS is working hard to provide clarity and certainty for taxpayers to enable them to meet their obligations effortlessly. We also strive to make it easy for taxpayers who are willing to comply. Our approach has always been that every taxpayer should pay their fair share. We are however, equally determined to make it hard and costly for non-compliant taxpayers not willing to meet their obligations. We are working hard to improve system capabilities, in order to detect those taxpayers who do not comply by using data to identify risk.
- Early evidence has highlighted the need to focus on improving compliance in this sector of property owners who derive income from fee-paying guests.
- Property owners who, to date, have not declared rental income are encouraged to regularise their affairs with immediate effect. Affected Taxpayers may choose to use the VDP which offers more favourable terms. Failure to regularise your affairs, may place taxpayers at risk and should they be selected by SARS for an audit, the more stringent normal processes will apply.
- The benefit of using the VDP is that it offers more favourable terms for an assessment in terms of the penalty amount.
- Taxpayers are reminded that failure to comply with their tax obligations may result in administrative penalties being imposed in addition to interest, or even criminal action being taken against them.
- The VDP unit at SARS can be accessed directly at VDP@sars.gov.za.

Preparation for annual employers filing season

- Due date for submission of the EMP501 covering the full tax year from 1 March 2020 to 28 February 2021 is 31 May 2021.
- Penalty for late submission (or incomplete submission): up to 10% of PAYE (para 14(6) of the Fourth Schedule)
 - Will be levied at 1% per month that the reconciliation is outstanding.

QUESTIONS?

Please use the Q&A portal

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